

**Arizona Department of Transportation**

**SECTION 106 FEDERAL-AID PROGRAMMATIC AGREEMENT  
(PA) Manual**

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## GLOSSARY OF TERMS AND ACRONYMS

Term	Definition
<b>ACHP</b>	<b>Advisory Council on Historic Preservation</b> An independent federal agency that promotes the preservation, enhancement, and productive use of the Nation’s historic resources, and advises the President and Congress on national historic preservation policy. ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into federal project requirements. ACHP oversees the review of projects under Section 106 of the NHPA.
<b>ADOT</b>	<b>Arizona Department of Transportation</b> Under state law ADOT is responsible for constructing and maintaining all interstate and state highways in Arizona and providing financial assistance to public airports for airport development projects.
<b>APE</b>	<b>Area of Potential Effects</b> Geographical area or areas within which the proposed undertaking may affect historic properties.
<b>ARHP</b>	<b>Arizona Register of Historic Places</b> A list of districts, sites, buildings, structures and objects maintained by the State Historic Preservation Office at Arizona State Parks & Trails, each determined by SHPO to be of historic, cultural, architectural, or engineering significance at the national, state, or local level.
<b>ARS or A.R.S.</b>	Arizona Revised Statute
<b>ASLD</b>	<b>Arizona State Land Department</b> The Cultural Resources Management Program coordinates interagency reviews of proposed revenue producing Trust land use to ensure compliance with the State Historic Preservation Act
<b>ASM</b>	Arizona State Museum
<b>ASP&amp;T</b>	Arizona State Parks & Trails
<b>AZSITE</b>	<b>Arizona’s Electronic, Web-based Cultural Resource Inventory</b> The AZSITE Database is a consolidated informational network of recorded archaeological sites, historic properties, districts, and inventory surveys within the state of Arizona. It is designed to reduce the amount of research time required for Class I surveys and to provide a database for research projects. The AZSITE Consortium is a partnership formed between the Arizona State Museum, the State Historic Preservation Office, the Museum of Northern Arizona and Arizona State University. The consortium was created to facilitate the integration and shared management of cultural resources information for the entire state. The consortium partners collaborate to manage, maintain, develop and control access to the AZSITE database system and to secure funding for these activities through external grant efforts and through data use fees.

<b>BIA</b>	<b>Bureau of Indian Affairs</b> Federal agency to be consulted when project results in new right-of-way or temporary construction easements on Tribal land. Consult in addition to Tribe.
<b>BLM</b>	Bureau of Land Management
<b>CCRF</b>	<b>Cultural Clearance Review Form</b> This is a document that is filled out by the applicant's cultural resource staff for the Arizona State Parks & Trail's grant application for the Recreation Trails Program. The purpose of this document is to summarize all the information needed to complete Section 106 review, including land ownership, scope of work, previous survey, presence of cultural resources.
<b>CE</b>	Categorical Exclusion (also referred to as a CE)
<b>CFR</b>	<b>Code of Federal Regulations</b> A codification of the general and permanent rules published in the <i>Federal Register</i> by the Executive departments and agencies of the federal government. The CFR is divided into 50 titles, which represent broad areas subject to federal regulation. Each title is divided into chapters, which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas. The ACHP regulations implementing Section 106 of the National Historic Preservation Act are in 36 CFR 800.
<b>CIF</b>	Consultation Initiation Form
<b>CLG</b>	<b>Certified Local Government</b> A local government that has made a commitment to historic preservation and has been approved by NPS through a certification process.
<b>CO</b>	County
<b>CRM</b>	Cultural Resource Management
<b>CRP</b>	Cultural Resource Professional
<b>e106</b>	<b>Electronic Section 106</b> The ACHP's electronic Section 106 documentation system.
<b>EA</b>	Environmental Assessments
<b>ECS</b>	Engineering Consultants Section
<b>EIS</b>	Environmental Impact Statement
<b>EP</b>	ADOT's Environmental Planning department
<b>FHWA</b>	<b>Federal Highway Administration</b> The FHWA is a part of the U.S. Department of Transportation and is headquartered in Washington, D.C., with field offices across the United States. They deliver the Federal-aid Highway Program. ENV works most closely with the Arizona Division office.
<b>G2G</b>	<b>Government to Government Consultation</b> This is in reference to Native American consultation between FHWA and the Tribes. The requirements and responsibilities of government-to-government consultation cannot be transferred to another agency (e.g., NEPA Assignment).

	Although ADOT consults with Tribes on projects, the Tribes may still request formal consultation with FHWA on a project.
<b>GIS</b>	<b>Geographic Information System</b> A GIS is a computer system capable of assembling, storing, manipulating, and displaying geographically referenced information, i.e., data identified according to their locations. Practitioners also regard the total GIS as including operating personnel and the data that go into the system.
<b>GRIC</b>	Gila River Indian Community
<b>HPIF</b>	<b>Historic Property Inventory Form</b> A SHPO form for documenting historic resources in Arizona.
<b>HPT</b>	<b>Historic Preservation Team</b> Cultural resource management group of qualified professional Historic Preservation Specialists under ADOT Environmental Planning.
<b>IGA</b>	<b>Intergovernmental Agreement</b> An agreement document between government entities to allow transfer of funds.
<b>IDO</b>	<b>Infrastructure Delivery and Operations Division</b> A subdivision of ADOT that consists of seven engineering districts and 11 support groups. The Division is directed by the Deputy Director for Transportation/State Engineer and four deputies who carry out the responsibility of constructing and maintaining all interstate and state highways in Arizona for ADOT.
<b>LPA</b>	Local Public Agency
<b>MOA</b>	Memorandum of Agreement
<b>MP</b>	<b>Milepost</b> Arizona mileposts start at 0 at the western and southern borders and increase as they progress across the state.
<b>NAGPRA</b>	<b>Native American Graves Protection and Repatriation Act</b> Requires federal agencies and museums that receive federal funds to repatriate Native American ancestral human remains and associated cultural artifacts to Tribes showing genetic or cultural affiliation with those remains and artifacts. Regulates excavation of such remains and artifacts on federal or Indian land, provides for a minimum 30-day hold on earthmoving activities that cause inadvertent discovery of such remains and artifacts.
<b>NEPA</b>	<b>National Environmental Policy Act</b> Articulates national policy on environmental protection and requires agencies to analyze the effects of their actions on the environment in making project decisions. Requires agencies to consider project impacts on the human and natural environment. FHWA implements NEPA by completing environmental reviews for a number of different laws and regulations at the same time as complying with NEPA in a single environmental review.
<b>NFS</b>	<b>National Forest Service</b> There are six separate National Forests in Arizona: Apache-Sitgreaves (ASNF), Coconino (CNF), Coronado (CRNF), Kaibab (KNF), Prescott (PNF), and Tonto (TNF).

<b>NHPA</b>	<b>National Historic Preservation Act</b> Requires federal agencies to identify and manage historic properties under their jurisdiction or control; to consider doing things that will advance the purposes of NHPA, and avoid, if possible, doing things contrary to its purposes; to consult and cooperate with others in carrying out historic preservation activities, and to consider the effects of their actions—including permit and assistance actions—on historic properties following a regulation issued by the ACHP. Also spells out the roles and functions of ACHP, SHPO, THPO.
<b>NNHPD</b>	<b>Navajo Nation Historic Preservation Division</b> Cultural resources compliance division of the Navajo Nation. Must be consulted (via THPO) for all projects on Navajo Nation land.
<b>NPS</b>	<b>National Park Service</b> A bureau of the Department of the Interior whose primary function is to manage the National Park System.
<b>NRHP</b>	<b>National Register of Historic Places</b> A list of districts, sites, buildings, structures and objects maintained by the National Park System, each determined by NPS to be of historic, cultural, architectural, or engineering significance at the national, state, or local level.
<b>On-Call</b>	<b>Consulting firm providing On-Call services to Environmental Planning or Project Management</b> These are the consulting firms that ADOT maintains a contractual relationship with for On-Call services.
<b>OWJ</b>	<b>Official With Jurisdiction</b> The OWJ is the federal, state, or local agency that owns or administers a Section 4(f) property or has been empowered to represent an agency on matters related to the property.
<b>PA</b>	For cultural resource practitioners, PA relates to Programmatic Agreement. However, ADOT Roadway Engineers define a PA as a Project Assessment for project scoping.
<b>PEDS</b>	<b>Project Environmental Data Sheet</b> Form developed by EP to facilitate communication between ENV Planners and On-Call planners at the beginning of the environmental clearance process. The form provides a roadmap for the environmental review that can be used by the consultant to develop a scope and fee document.
<b>PM</b>	<b>Project Manager</b> Individuals at ADOT who oversee and coordinate activities during the design phase of projects prior to construction.
<b>PTS</b>	Project Tracking System
<b>ROW</b>	Right-of-Way
<b>RTP</b>	<b>Recreation Trails Project</b> A grant program funded by FHWA and administered by ASP&T.
<b>SCIP</b>	<b>San Carlos Irrigation Project</b> Both a system of canals and associated infrastructure and a subdivision of BIA



	that owns the canals and associated infrastructure.
<b>SCIDD</b>	<b>San Carlos Irrigation and Drainage District</b> Entity that maintains and operates the canals in the district.
<b>SHPO</b>	<b>State Historic Preservation Office/Officer</b> The Arizona State Historic Preservation Office, a division of Arizona State Parks & Trails. SHPO assists private citizens, private institutions, local governments, Tribes, and state and federal agencies in the identification, evaluation, protection, and enhancement of historic and archaeological properties that have significance for local communities, the State of Arizona, or the Nation. The role and function of the SHPO is defined in both state law (Arizona Historic Preservation Act) and federal law (National Historic Preservation Act, as amended). The head of the State Historic Preservation Office is the State Historic Preservation Officer. The acronym SHPO may refer to either the office or the officer.
<b>SOW</b>	Scope of Work
<b>SRSF</b>	Survey Review Summary Form – A shortened report format approved for use by SHPO for negative survey reports.
<b>TCE</b>	Temporary Construction Easement
<b>TCP</b>	<b>Traditional Cultural Property</b> A Traditional Cultural Property (TCP) is a property that is eligible for inclusion in the National Register of Historic Places (NRHP) based on its associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living community.
<b>THPO</b>	<b>Tribal Historic Preservation Office(r)</b> The official of a federally recognized Indian Tribe that oversees the Tribe's historic preservation program, where the Tribe has been approved by NPS to carry out all or some of the functions of the SHPO within the external boundaries of its reservation. The Gila River Indian Community, Colorado River Indian Community Hopi Tribe, Hualapai Tribe, Navajo Nation, Pascua Yaqui, San Carlos Apache Tribe, Salt River Pima-Maricopa Indian Community, and White Mountain Apache Tribe have designated THPOs.
<b>Undertaking</b>	A project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal or state agency, including those carried out by or on behalf of a Federal or states agency; those carried out with Federal or state financial assistance; and those requiring a Federal or state permit, license or approval.
<b>USACE</b>	<b>US Army Corps of Engineers</b> Federal agency responsible for providing engineering services to the nation including planning, designing, building and operating water resources and other civil works projects. USACE regulates the discharge of dredged or fill material within all waters of the US under Section 404 of the Clean Water Act.
<b>USC</b>	United States Code

## 1 INTRODUCTION

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### 1.1 The Historic Preservation Team

As one of Environmental Planning's (EP) several technical teams, the Historic Preservation Team (HPT) is primarily responsible for ensuring that all construction projects associated with the ADOT's Highway System consider project-related effects to significant historic and prehistoric cultural resources, and that these undertakings are in compliance with federal and state historic preservation laws. These responsibilities are addressed by:

- Providing guidance to ADOT regarding the best way to manage historic properties (prehistoric, historic, and traditional cultural properties) within ADOT's right-of-way (ROW), and consider such properties in compliance with environmental and historic preservation laws. This may include working with design and project management teams to evaluate the best project alternatives, determine appropriate avoidance measures, and develop and implement appropriate mitigation measures when avoidance is not possible.
- Ensuring the appropriate identification, evaluation, recordation, documentation, and curation of cultural resources; and implementing interpretation, conservation, education, and training programs related to historic preservation.
- Coordination with appropriate local, state and federal agencies and Tribal governments
- Providing cultural resource compliance with various state and federal laws, regulations, standards, and guidelines in order to manage project impacts on cultural resources.
- Integrating cultural resource information into environmental review documents.

### 1.2 Section 106 Federal-aid PA Manual

The Federal Highway Administration (FHWA) Arizona Division Office implements the Federal-aid Highway Program (Program) in the state of Arizona by funding and approving state and locally sponsored transportation projects that are administered by ADOT. These Program-funded projects are undertakings subject to review under Section 106 of the National Historic Preservation Act (NHPA) [54 United States Code (USC) § 306108] and its implementing regulations at 36 Code of Federal Regulations (CFR) Part 800.

#### 1.2.1 2015 Section 106 Programmatic Agreement

On December 16, 2015, the FHWA, ADOT, the Arizona State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation (ACHP), and other parties executed a programmatic agreement (PA), providing FHWA and ADOT a customized Section 106 compliance process for this Program in Arizona (2015 PA). This customized process moved away from case-by-case and project-by-project Section 106 review, while still maintaining a comparable level of consideration of historic properties with the standard Section 106 process. As a program alternative, defined under 36 CFR 800.14(b), this programmatic agreement replaces the standard Section 106 review process for projects that meet the conditions for its use. Under the PA, several Section 106 decisions and findings are now completed by HPT Staff without formal consultation with the SHPO, the FHWA, the ACHP, or other consulting parties. These in-house decisions and findings are reported quarterly to the signatories and

concurring parties to the PA, along with other actions following the PA's stipulations. As a result, Section 106 consultation with the SHPO and other consulting parties focuses on those projects with historic properties in the project APE. The PA also lays out how and when ADOT consults with federally-recognized Tribes and with state and other federal agencies.

Since its execution at the end of 2015, the PA has yielded several benefits, including:

- Expediting project delivery while providing appropriate consideration of historic properties
- Increasing predictability in the project development process
- Allowing HPT Staff to focus on projects that may have an adverse effect on historic properties, and
- Promoting consistency in project reviews within ADOT, FHWA, and the SHPO.

#### 1.2.2 NEPA Assignment and the 2020 Section 106 Programmatic Agreement

On January 3, 2018, ADOT and FHWA entered into a Memorandum of Understanding (MOU) pursuant to 23 U.S.C. 326 that assigned to ADOT the responsibility for all environmental review for projects classified as Categorical Exclusions. ADOT and FHWA entered into an MOU pursuant to 23 U.S.C. 327 that assigns environmental review responsibility to ADOT for all projects not included in the 326 MOU and with the exception of except those specifically excluded in the 327 MOU (Z:\ENV\NEPA Assignment\MOUs\327 NEPA Assignment Application Files). Other projects that remain with FHWA include those projects that cross state and international boundaries. Execution of the 327 MOU occurred on April 16, 2019.

As a result of the responsibility for environmental review, including Section 106 review, being assumed by ADOT, the 2015 PA has been replaced with a new PA on September 23, 2020 that addresses the changed roles of both ADOT and FHWA in the Section 106 process. The 2020 PA maintains the same structure and program alternative as the 2015 PA, but identifies ADOT as the lead federal agency.

This Section 106 PA Manual is written to serve as a direction for implementing the 2020 PA [Z:\ENV\9152\H\_P\_T\2020 Section 106 PA]. The document also provides guidance and procedures for federally funded projects and activities that do not fall under the PA.

It is important to note that a Program-funded project may be located within lands of various jurisdictions:

- within ADOT ROW that is easement from a Tribe and/or land managing agency that are signatories to the PA,
- within ADOT ROW that is easement from a Tribe and/or land managing agency that are not signatories to the PA,
- within ADOT-owned ROW,
- outside of ADOT ROW, on lands that are owned or managed by private entities, Tribes, or agencies.

Regardless of jurisdiction, any project may be within lands that are of interest in terms of Tribal consultation. As a result, HPT Staff will follow the standard Section 106 review process for the lands not owned or managed by agencies that have signed the PA as well as all Tribal consultation. No Tribes elected to sign the PA.

2020 Programmatic Agreement Signatories and consulting parties include:

- Advisory Council on Historic Preservation
- Arizona Department of Transportation
- Arizona State Land Department
- Arizona State Parks & Trails
- Arizona State Historic Preservation Office
- Arizona State Museum
- Bureau of Indian Affairs, Western Regional Office
- Bureau of Land Management
- Bureau of Reclamation
- City of Sedona
- City of Tucson
- Federal Highway Administration
- Maricopa Department of Transportation
- Pima County
- Town of Payson
- United State Forest Service
- United States Corp of Engineers

## **2 PROJECT INITIATION**

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ADOT projects originate in the Planning and Programming Group within the Multimodal Planning Division. Environmental Planning (EP) is informed of new ADOT projects from the Project Management Group, and of new Local Public Agency (LPA) projects by the ADOT LPA Section. All new projects requiring assignment go directly to the EP Administrator as the primary contact and to the EP Project Delivery Manager as a secondary contact. If requests for assignment are sent directly to the Environmental Planners or Technical Specialists, those should be forwarded to the EP Project Delivery Manager. The EP Project Delivery Manager will assign the project to one of the planning team leads (Senior Environmental Planner) and concurrently send to the technical area team leads for assignment.

### **2.1 Projects with No Potential to Cause Effects to Historic Properties**

The HPT Team Lead will review new projects to determine if they have potential to cause effects to historic properties. The determination that an undertaking has no potential to cause effects is based on the nature of the project and the project scope of work, not the conditions of the APE or whether or not any historic properties are in fact present. The No Potential to Cause Effects is part of the Section 106 process and the review of these undertakings satisfies the Section 106 responsibilities. If a project has no potential to cause effects, the HPT Team Lead will prepare a memo. The form should be sent to the Environmental Planner and filed in the No Potential Memos folder in the Quarterly Report documentation folder on the ENV-Drive (\\ENV\9152\H\_P\_T\PA Documentation). For an example of a No Potential Memo, see Appendix A1, Project Documentation Templates.

### **2.2 Project Assignments**

If a project is determined to have potential to cause effects to historic properties, the HPT Team Lead will assign the project to an HPT Staff, add it to the HPT master tracking list, and provide any available information regarding project description and scope. The HPT Staff will make an entry in the Project Tracking System (PTS) and add his or her name using the dropdown field on the Cultural Resources tab. Additionally, the HPT Specialist will add the project to their individual tracking sheets. The Environmental Planner will coordinate with the Project Manager (PM) to obtain information regarding project scope, schedule, and other preliminary information and will provide this information to the HPT Staff and other technical specialists when the information is available.

### **2.3 Filling out the Project Environmental Data Sheet (PEDS)**

With the exception of LPA projects, most projects will have a PEDS. The PEDS is not an environmental requirement but an additional aid developed by EP to aid in the contracting process. The overall purpose of the PEDS is to determine whether a consultant is necessary and then to provide the on-call environmental consultant with a general scope of work, an estimate of tasks that will be required for the project, and a rough estimate of hours anticipated for the contractor. The cultural resources section of the PEDS has an additional purpose as well, as described below.

The Environmental Planner is responsible for coordinating the PEDS, and will fill out the first section with general project information before sending the PEDS to the technical specialists, including HPT Staff. The technical specialists have one week to complete the appropriate sections of the PEDS and return it to the Environmental Planner.

In order to fill out the PEDS, the HPT Staff will need to define an Area of Potential Effects (APE) and conduct background research regarding previous investigations within the APE. Guidance for defining an APE and conducting background research are both described in greater detail below.

The PEDS serves as a high-level roadmap for the environmental review and a tool to assist the consultant in developing a scope and fee. It also serves as a decision tree for HPT to assess whether or not a cultural resources consultant will be needed for the project. The Cultural Resources section of the PEDS requires the HPT Staff to provide the following information:

- Consultant services requested?
- Prior survey?
- APE completely surveyed?
- APE partially surveyed? Details?
- Additional survey required? Details?
- Sites in project area?
- Previous consultation?
- Consultation documentation available?
- New consultation required?
- List applicable PA stipulations.
- List consulting parties for current undertaking—both agencies and Tribes.
- Identify deliverables and projected due dates.

Filling out the PEDS generally requires the HPT Staff to conduct background research in addition to defining an APE. Often there is only preliminary information regarding the project at the time the PEDS is completed, so it is important to save the results of the background research in the project folder so that when the SOW and project limits are further refined during the project development process, it won't be necessary to duplicate efforts to find previous reports and consultation. It may be necessary to redefine the APE as project design progresses. Consultation for most projects does not normally occur until approximately 60% plans have been submitted because the project is constantly being adjusted up to this point. However, consultation occurs much earlier on large scale projects. Guidance and helpful tips for conducting background research are presented below.

### 2.3.1 Area of Potential Effects

After reviewing the project information provided by the Environmental Planner, the HPT Staff (in discussion with the project team, as needed) defines the Area of Potential Effects (APE). Attachment 4 of the PA addresses the process for defining an APE, see Appendix A2. The APE definition is documented in the PA memo or consultation letter.

An APE delineates the boundaries within which it can be reasonably expected that a proposed undertaking has the potential to affect historic properties, should any be present. It may be the ROW itself, or an area either larger or smaller than the ROW, depending on the scope and design of the undertaking. In addition to the project footprint, new ROW, permanent drainage easements, temporary construction easements (TCEs), and staging/stockpiling areas, if included in the project design, should all be considered as part of the APE. Potential effects to be considered in defining an APE may include, but are not limited to, physical damage or destruction of all or part of a property; physical alterations;

moving or realigning a historic property; isolating a property from its setting; visual, audible, or atmospheric intrusions; shadow effects; vibrations, and change in access or use.

For archaeological properties, an APE is typically established based on an undertaking's potential for direct effects from ground-disturbing activities. Some types of archaeological sites may also have qualities, such as aspects of setting that contribute to a property's eligibility, that could be subject to indirect effects (e.g., rock art, standing prehistoric architecture, etc.). Buildings, structures, objects, districts, and some sites, including traditional cultural properties (TCPs), are more likely to be subject to indirect, as well as direct effects. It is important in defining the APE to consider the undertaking's potential effects on a historic property as a whole, taking into account the reasonably anticipated or known boundaries of archaeological sites.

If there are cultural resources within the ADOT ROW, the original site card, report, google earth, or other documents are reviewed to determine the site boundary. In some cases, the boundary of the site may be within the ADOT ROW, but will not be affected by the project activities because the site may be either above or below the roadway.

HPT Staff have two primary electronic databases (AZSITE Database and ADOT Portal) as well as multiple other resources at their disposal to aid in locating the information that is required to review each project thoroughly, complete a PEDS, and accurately write Section 106 consultation. Table 1 indicates what information can be obtained from which source. Not all resources are necessary to use for background research for each project.

For ADOT reports and previous consultation letters, the ADOT HPT Portal is the best resource. AZSITE offers search functions for projects, sites, and references and has free electronic versions of ASM site cards and project registration forms online.

Background research that will inform the PEDS process includes researching the area within and adjacent to the project footprint. In cases where projects have potential to cause indirect effects, the area to be researched will vary depending on the potential source of indirect effects. In order to fill out the PEDS, the following areas should be researched:

- Land ownership
- Previous survey reports in the project area
- Adequacy of previous surveys (see SHPO Guidance #5 <https://azstateparks.com/shpo-guidance-points>)
- Previously identified cultural resources
- Consulting parties
- Tribal claim areas

Note: AZSITE Database may not always have the correct locational information. It is always advised to verify sites with survey reports and site forms.

### 2.3.2 Land Ownership

The HPT Staff identifies all landowners through resources available to them (e.g., AZSITE, ROW, county assessor maps) information provided by the Environmental Planner and project team. If any of the following entities own or manage land within the APE, the HPT Staff contacts them directly as they may

have information regarding resources within their jurisdiction that is not available on AZSITE or other available tools:

- Tribes
- Individual National Forests
- Military
- City of Phoenix
- City of Tucson
- Salt River Project
- Pima County
- City of Scottsdale

NOTE: ADOT has easement over federal lands, but does not typically own the ROW. It is advisable to double check underlying landownership status.

While most agencies input data into AZSITE, a few agencies and Tribes maintain their own databases. A large portion of the ADOT ROW has been previously surveyed for cultural resources. Unless the areas have not been previously surveyed, the survey does not meet today's standards, or the specific agency and Tribe has requested a site file search for their lands, a new records check is not completed. The HPT Portal Contacts page is the official resource for the most updated contact information for each agency or Tribe and provides information on consultation preferences. Gila River Indian Community (GRIC), for example, will conduct the site file search with no consultant required. There is typically a charge for that service. ADOT has an intergovernmental agreement (IGA) with GRIC that allows EP to pay GRIC directly for their services. To procure the services of any GRIC Staff for a project, the HPT Staff notifies the Cultural Resources Program Manager to utilize the IGA.

Other entities may require an on-site visit to access their site files and other records. If necessary, a consultant may be tasked with doing background research requiring an on-site visit.

If necessary, additional resources to be checked include local public agencies and historical societies. These are particularly useful for researching historic buildings.

### 2.3.3 Previous Survey

The HPT Staff compiles a list of previous surveys within the APE and related State Historic Preservation Office (SHPO) or Tribal Historic Preservation Office (THPO) consultation. For projects that are within ADOT ROW, the HPT Portal is the best place to begin to research previous surveys. The Portal has search functions that can be utilized to find survey reports and associated consultation letters. Document searches can locate surveys on individual routes within identified milepost limits. There is also a GIS map layer that can also locate surveys within identified route and milepost limits. If a Portal search identifies adequate survey reports that cover the entire APE, it may not be necessary to check other sources for additional survey reports for the level of research needed to complete a PEDS and determine whether any PA stipulations are applicable.

If a Portal search does not identify survey reports covering the entire project area, or if the project is an LPA project not on the ADOT system, the HPT Staff conducts an AZSITE search. For projects on federal or Tribal land, or for some LPA projects, the agency or Tribe should be contacted to make arrangements for a files search. As mentioned above, some Tribes and agencies will conduct the files search; there may or



may not be a cost associated with such a search. Other agencies and Tribes may require the HPT Staff or a consultant to make a trip to their files to conduct the search.

If a consultant is required to conduct a search because it requires a trip to Tribal or agency offices, or because the APE is too large and/or there are too many reports and cultural resources to be researched by the HPT Staff in a timely fashion, the HPT Staff indicates that a consultant is needed that on the PEDS. It is important to note that until the rest of the that until the research is completed, the rest of the consultant SOW cannot be fully defined as additional survey may also be needed. For large, complex projects where consultants are needed to gather background data, a Consultant Initiation Form (CIF) may be requested.

If the APE, or a portion thereof, has not been surveyed and the HPT Staff determines it has not been previously disturbed<sup>1</sup>, or if the APE has been surveyed but the HPT Staff determines the survey is not adequate, it may be appropriate to have a new survey conducted.

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<sup>1</sup> The term previously disturbed as defined in the PA refers to areas where previous construction, or other activities by human or natural agents, has physically altered soils within the three-dimensional APE to the point where there is no potential for an archaeologically significant property to remain, as determined by the HPT Staff. These areas include, but are not limited to, the entire roadway prism, as defined and illustrated in the PA.

**Table 1. Comparisons of Different Mapping Applications**

	<b>AZSITE*</b>		<b>ADOT Portal Map*</b>		<b>Google Earth</b>		<b>ArcGIS HPT Base Map</b>	
	Present	Notes	Present	Notes	Present	Notes	Present	Notes
<b>Topo Maps</b>	<b>X</b>		<b>X</b>	updated 2013	<b>X</b>	Google Earth file available	<b>X</b>	
<b>Aerials</b>	<b>X</b>		<b>X</b>		<b>X</b>		<b>x</b>	
<b>Street View</b>					<b>X</b>			
<b>Interstates</b>	<b>X</b>		<b>X</b>	updated 2020	<b>X</b>		<b>X</b>	
<b>Highways</b>	<b>X</b>		<b>X</b>	updated 2020	<b>X</b>		<b>X</b>	
<b>Major Roads</b>	<b>X</b>		<b>X</b>	updated 2020	<b>X</b>		<b>X</b>	
<b>All Roads</b>			<b>X</b>	updated 2020	<b>X</b>		<b>X</b>	
<b>Landownership</b>	<b>X</b>	Arizona Land Resource Information System (ASLD)	<b>X</b>	Arizona Land Resource Information System (ASLD)			<b>x</b>	Arizona Land Resource Information System (ASLD)
<b>Previous Surveys</b>	<b>X</b>	Not on Tribal land - missing some on federal lands. Best source for state, municipal, county, and	<b>X</b>	Best source for ADOT ROW and LPA projects after 2012			<b>x</b>	out dated

		private						
<b>Cultural Resources</b>	<b>X</b>	Not on Tribal land - missing some on federal lands. Best source for state, municipal, county, and private	<b>X</b>	Best source for ADOT ROW and LPA projects after 2012				
<b>Township and Range</b>	<b>X</b>		<b>X</b>	updated 2010	<b>X</b>	Google Earth file available	<b>X</b>	
<b>Section</b>	<b>X</b>		<b>X</b>	updated 2010	<b>X</b>	Google Earth file available	<b>X</b>	
<b>MP</b>	<b>X</b>	Best	<b>X</b>	Best -updated 2016	<b>X</b>	Google Earth file available	<b>X</b>	
<b>BLM Field offices</b>			<b>X</b>	updated 2018			<b>X</b>	
<b>Bridges</b>	<b>X</b>	Fraser 2008	<b>X</b>	not working			<b>X</b>	Fraser 2008
<b>CAP Canal Map</b>			<b>X</b>	Updated 2009			<b>X</b>	
<b>Cemeteries</b>							<b>X</b>	
<b>City boundaries</b>			<b>X</b>	Updated 2003			<b>X</b>	limited number
<b>Cultural Reports</b>			<b>X</b>	Not complete, but links to several				

				reports for almost all routes				
<b>Flagstaff Area Sites</b>					X	Google Earth file available		
<b>Historic Districts</b>	X	Good guide, but not complete.					X	limited number
<b>Historic Frazer Bridges</b>				Good guide, but verify info in Fraser documents				
<b>Hydrology</b>	X		X		X	Google Earth file available	X	
<b>Material Sources</b>			X	Updated 2011				
<b>Mines</b>			X	Updated 2005/2010	X	Google Earth file available	X	recent
<b>Mountain Summits</b>							X	
<b>National Monuments</b>							X	
<b>National Register</b>					X	Google Earth file available (incomplete)		
<b>Navajo Chapters</b>							X	
<b>Navajo Land</b>							X	

<b>status</b>								
<b>Navaho Treaty Boundaries</b>							<b>X</b>	
<b>New ADOT districts</b>			<b>X</b>	Updated 2016				
<b>Old ADOT districts</b>							<b>X</b>	
<b>Canals Howard and Huckleberry</b>	<b>X</b>				<b>X</b>	Google Earth file available	<b>X</b>	
<b>Phx Arch Midvale</b>					<b>X</b>	Google Earth file available	<b>X</b>	
<b>Phx Arch Turney</b>					<b>X</b>	Google Earth file available	<b>X</b>	
<b>Pipelines</b>			<b>X</b>	Updated 2010				
<b>Power lines</b>			<b>X</b>	Updated 2010				
<b>BOR structures, wells, BM, Indian villages 1902-03</b>	<b>X</b>							
<b>Sedona Area Sites and IOs</b>	<b>X</b>				<b>X</b>	Google Earth file available		
<b>SHPO county sites</b>	<b>x</b>	From old county highway map						

		books at SHPO						
<b>SHPO topo map sites</b>	<b>X</b>	From old topo maps at SHPO						
<b>Tribal Boundaries</b>			<b>X</b>	Updated 2016				
<b>Tribal Claim areas</b>			<b>X</b>	Updated 2016			<b>X</b>	
<b>Western Area Power Admin Facilities</b>					<b>X</b>	Google Earth file available		
<b>Watersheds</b>					<b>x</b>	Google Earth file available	<b>X</b>	
<b>*Restricted Access – must be preapproved.</b>								

If the APE has been surveyed, the HPT Staff checks the original report to ascertain whether or not any cultural resources have been previously recorded within the APE. Checking the report itself, rather than relying on AZSITE for that information, is generally more accurate. AZSITE is not completely up-to-date. In determining whether or not new survey is needed, the HPT Staff takes into account whether there are cut ditches, urbanization, obvious underground utilities, or other disturbances that may contribute to a situation where new survey is unwarranted.

#### 2.3.4 Cultural Resources

The HPT Staff compiles a list of cultural resources identified within the APE (the Cultural Research document referenced above may provide useful tips for conducting this research), and notes the National Register of Historic Places (NRHP) eligibility status of each resource and the criteria(on) under which it is eligible. Acceptable NRHP statuses include the following:

- Determined eligible
- Recommended eligible
- Determined ineligible
- Recommended ineligible
- Unevaluated

Although the concept of “potentially eligible” may be useful for management purposes, at present the Arizona SHPO does not accept that as an eligibility status. Instead, cultural resources that have been described in the literature as potentially eligible are recorded as “unevaluated.” If there are unevaluated sites or structures in the APE that cannot be avoided and may be affected by the proposed undertaking, the consultant’s SOW should include evaluating them. Cultural resources that are unevaluated but can be avoided, can be treated as if they were eligible for the purposes of a particular undertaking.

Once a cultural resource has been determined eligible, it can be referred to as a historic property.

#### 2.3.5 Identifying Consulting Parties

The HPT Staff compiles a list of consulting parties. Under 36 CFR 800(2)(c), Section 106 consulting parties include SHPO (or THPO); Tribes; local governments with jurisdiction over the APE; applicants for federal assistance, permits, licenses, and other approvals; and other individuals and organizations with a demonstrated interest in the undertaking, including the public.

##### 2.3.5.1 Federal Agencies

Agencies are consulted if the agency has a Section 106 responsibility for the project. Typically, that occurs when a project is on lands owned or managed by a federal agency, such as when a project is on ADOT ROW that is easement across Bureau of Land Management (BLM) or Forest Service land. ADOT also consults with a federal agency when that agency issues a permit for any project activities, such as the U.S. Army Corps of Engineers (USACE) issuing a permit under Section 404 of the Clean Water Act. Typically, the USACE only wants to be consulted if there are historic properties or unevaluated cultural resources within their jurisdictional area for the project.

The lead federal agency status is normally negotiated among the agencies for standard Section 106, but it is usually the federal agency that is leading the project or has the most land involved. For ADOT, under the 326 and 327 MOUs, ADOT is the lead agency – as indicated in the 2020 PA. As long as the federal

agencies can use the Section 106 document to satisfy their own Section 106 requirements, it is usually acceptable with the other federal agencies.

#### 2.3.5.2 Other State Agencies

The Arizona State Museum (ASM) does not have any Section 106 responsibilities, and they are not a formally recognized consulting party under Section 106 (as they are not a federal agency). However, if a project includes survey, monitoring, or data recovery on state land or any subdivision of state land, ASM permits the work. Although issuing a permit is not a Section 106 action for ASM, including them in consultation is usually the most efficient way to ensure that they get the project information they require in order to process a project-specific permit for monitoring or excavation within the boundaries of a known archaeological site. For projects where a survey is being conducted under an ASM Antiquities Act blanket permit, ASM receives a copy of the report from the consultant under the terms of the permit. ASM has indicated that they want to be consulted on the report when it is still possible to have any comments, they may have addressed through report revisions. The most efficient way to ensure that ASM has the information they need in order to efficiently process individual permits or process blanket permit submittals is to include them in consultation.

If a project is on ADOT ROW that is easement across land owned or managed by another state agency, such as the Arizona State Land Department or the Arizona Game and Fish Department, the HPT Staff consults with that agency as a party with a demonstrated interest in the project.

#### 2.3.5.3 Other Consulting Parties

If a project is in ADOT ROW that is easement across a historic feature or historic structure that is of significance to another group, and the group is made known to ADOT, then they will be incorporated into the Section 106 consultation process as an interested member of the public. In example, the Apache Trail has significance to a specific tourism group entitled, the Apache Trail Attractions. Future consultation for projects on the Apache Trail will include them in consideration of 36 CFR 800.2(c)(5).

#### 2.3.5.4 Tribes

Tribes are essential consulting parties in the Section 106 process. If an undertaking is on Tribal lands, including in ADOT's ROW that is easement across Tribal lands, the HPT Staff consults with that Tribe, regardless of whether the Tribe has a THPO or not. Additionally, the HPT Staff consults with any Tribe that attaches religious and cultural significance to any historic properties that may be affected by an undertaking, regardless of whether the project is on Tribal land or not. The HPT Staff uses the Tribal claims layer in the HPT Portal to identify which Tribe or Tribes need to be consulted for a particular undertaking. The Tribal claims layer depicts the areas of the state that each Tribe has identified as the area within which that Tribe should be consulted.

The BIA is included in consultations when the project is on Tribal land and there is new ROW or a TCE. In these situations, the BIA is consulted directly, as is the Tribe on whose land the project is taking place. BIA is also included on projects involving San Carlos Irrigation District or San Carlos Irrigation Project. The BIA Pima Agency is included on all consultation with GRIC.



ADOT consults with THPOs about cultural resources on Tribal lands in the same way as they consult with SHPO; and ADOT does not consult with SHPO when a project is entirely on lands of a Tribe that has a THPO. Currently, there are 10 federally-recognized Tribes that have National Park Service-certified Tribal Historic Preservation Officer programs in Arizona:

- Colorado River Indian Tribes
- Gila River Indian Community
- Hopi Tribe
- Hualapai Tribe
- Navajo Nation
- Pascua Yaqui Tribe
- Salt River Pima-Maricopa Indian Community
- San Carlos Apache Tribe
- Tohono O'odham Nation
- White Mountain Apache Tribe

An eleventh THPO, Zuni Pueblo, has Tribal lands in Arizona but is headquartered in New Mexico. SHPO and several of Arizona Tribes have developed an online Government-to-Government Consultation Toolkit that includes information regarding agency and Tribal contact information, consultation protocols, and the Tribal claims map among other information. At present this webpage cannot be accessed from ADOT's network. Some of the Tribal claims maps and consultation protocols provided in the toolkit are not fully consistent with the information in the HPT Portal or ADOT's Tribal claims maps. ADOT consultation should continue to use the protocols and maps in the HPT Portal.

### 3 SECTION 106 PROCESS UNDER THE 2020 PROGRAMMATIC AGREEMENT

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#### 3.1 Introduction

After the basic information for the project has been compiled, the HPT Staff reviews the project with respect to the 2020 PA [Z:\ENV\9152\H\_P\_T\2020 Section 106 PA] if the project is federally funded and falls under the 326 or 327 MOU.

As noted in Section 1.0 above, the 2020 PA defines the procedures for implementing Section 106 of the NHPA and its implementing regulations for the Federal-aid Highway Program in Arizona. The 2020 PA also establishes procedures for consultations with multiple federal and state agencies. Tribal procedures are also included, but no Tribes have elected to sign the PA.

##### 3.1.1 PA Participants and Applicability

Appendix A lists the agencies that are participating in the PA. If a project falls within the lands of the agencies listed in Appendix A, ADOT will consult with these agencies following the stipulations of the PA and the steps detailed below.

If a Tribe or agency is not participating in the PA, then ADOT will implement a standard (non-PA) Section 106 process for projects within lands under the jurisdiction of these Tribes and agencies. This standard, non-PA process is described in Section 4.0 of this Handbook.

The PA may be used for LPA projects regardless of whether a given LPA is a participant in the PA. Unlike Tribes and resource agencies, LPAs have no Section 106 responsibilities, as they are not federal entities. Those LPAs that are certified local governments (CLGs) have been invited to participate in the PA, but their participation in the PA as signatories or concurring parties is not required in order for the PA to be implemented for an LPA project. As project applicants, they are entitled consulting parties in the Section 106 process. For LPA projects, ADOT is the responsibility entity for Section 106.

If a CLG is the project proponent for an LPA project and is not a signatory or concurring party to the PA but has agreed through emails to following the terms of the PA, the CLG will be included in informal coordination or consultation for PA actions consistent with the procedures described below for signatory landowners. An email or telephone call will document the CLG's interest in using the PA.

Because of their status as consulting parties, the same informal coordination or consultation described above for CLGs is applicable to non-CLG LPAs. Given that non-CLG LPAs typically do not have professional staff who can evaluate the PA or concur with its proposed use, their concurrence is not required, and ADOT may use the PA for non-CLG LPA projects as long as the LPA does not object to its use through email.

##### 3.1.2 Coordination and Consultation under the PA

The PA discusses general protocols for consultation and coordination with Tribes (Stipulation V) and agencies (Stipulation VI), and details when formal consultation is required (e.g., VIII.F.2b, No Adverse Effect) and when informal coordination and quarterly reporting (Stipulation XVII.B) is appropriate. Some specific guidance on consultation and coordination is below.

If a project occurs on easement across another agency's land, and the agency is a signatory to the PA, the HPT Staff informally coordinates (agencies) or consults (Tribes) with the landowner regarding

decisions that would lead to documentation to the Quarterly Report rather than formal consultation. This can be accomplished either solely via email or by a combination of phone conversation(s) with email follow ups for all agencies and for Tribes that agree to the informal process. General consultation protocols are in Stipulation V (Tribes) and VI (agencies) of the PA, including guidance for following up with non-responsive consulting parties.

Specific consultation protocols and contact information for each individual agency and Tribe are maintained on the Contacts page of the HPT Portal. When an HPT Staff is aware of a change to any contact information or consulting protocol, that information is transmitted to the entire HPT team by email, with a request that the Portal Administrator update the Contacts page. The Portal Administrator updates the information and notifies the Team by email that the update has been completed.

Some agencies, such as the Tonto National Forest and Fort Huachuca, may have their own lists of Tribes that they consult for their undertakings, and may request that we include all the Tribes they would consult if their list is different from ADOTs. When that is the case, the consultation list should be inclusive of all the Tribes on both the agency and ADOT's list. Agencies that have requested we incorporate their consultation list with ADOT's list are so identified in the protocols maintained in the HPT Portal.

Decisions that are not documented to the quarterly report require formal consultation letters. The PA identifies when individual consultation is required and what the consultation timeframes are in individual stipulations under Stipulations VIII and IX.

### 3.1.3 Government-to-Government Consultation

Under the 326 and 327 MOUs, ADOT conducts all consultation with agencies and conducts routine consultation with Tribes. FHWA retains responsibility for Government-to-Government (G2G) consultation with Tribes. Tribes may request G2G consultation on any issue related to a Federal-aid project, not just Section 106. Such requests will be handled by FHWA on a case-by-case basis. ADOT will conduct Section 106 consultation with Tribes unless the specific project has been excluded from Assignment by FHWA (See Appendix B).

### 3.1.4 Quarterly Reporting and PA Documentation

A number of stipulations of the PA allow for quarterly batch consultation and reporting of Section 106 findings and other decisions. Those stipulations are:

- Screened Undertakings Exempted from Further Review (Stipulation VIII.C.1)
- Findings of No Historic Properties Affected (Stipulation VIII.F.1.a)
- Findings of No Adverse Effect with Standard Conditions (Stipulation VIII.F.2.a.i)
- Changes in Scope of Project where:
  - There is no change in APE or finding of effect or (Stipulation IX.A.1)
  - The APE is modified, there is no new survey needed, same finding of effect (Stipulation IX.A.2)
  - The APE is modified, there are no additional cultural resources identified within the new APE, and the finding of effect is not altered (Stipulation IX.A.3)
  - The APE is modified, there are new sites, and a new finding of effects (Stipulation IX.A.3b)

After the memo has been completed for the project the HPT Team lead reviews the memo at the same time as the Environmental Planner to confirm that the scope provided in the memo is the PM-approved scope of work. The HPT Team Lead ensures the necessary main components of the memo are included (326/327 Memo language, APE, scope of work, land ownership, consulting parties, informal concurrence from landowners for use of the PA, inventory results, historic properties, eligibility, and finding of project effect). Depending on whether there is a new survey or whether survey is not needed, additional information may be included in the PA memo.

SHPO concurrence is not required for most PA stipulations that are reported quarterly. However, any time the APE or portions of the APE have not been surveyed, and the HPT Staff has determined that a survey within the APE is unwarranted, SHPO concurrence (and landowner concurrence if appropriate) is required on this determination before moving forward. The exception to this is when screening undertakings under Stipulation VIII.C.1 and Attachment 3 of the PA. When applying Attachment 3, if an undertaking takes place within a portion of the ROW meeting the PA definition of “previously disturbed,” the HPT Staff can make a determination that survey of that area is not warranted without SHPO concurrence.

Once concurrence has been obtained from the landowner, if any, and SHPO if required, the memo is completed and any supplemental information necessary to support the decision is filed in the PA documentation folder and in the EP-Drive. The memo, or the link to the memo’s location on the ENV-Drive, is sent to the Environmental Planner. Although SHPO concurrence that are documented to the quarterly report is not required prior to submission of the quarterly report (except for situations of no finding new survey or unsurveyed/disturbed area confirmation), SHPO has requested that they be sent a copy of the documentation as the project is ongoing, rather than waiting until the quarterly report is submitted, because it simplifies their bookkeeping. When the memo and any accompanying map or other documentation such as a Survey Report Summary Form (SRSF) is completed and certified, the HPT Staff sends a copy of that documentation to SHPO and makes an entry in the PTS that it has been done. Transmittals of such documentation are typically electronic, and the email transmittal and other relevant communication with SHPO are copied to the project file.

### 3.1.5 Transitioning from Preliminary Background Research to PA Implementation

It is necessary to determine at the beginning of the project whether a consultant would be needed for the project. In order to make an educated decision, background research is conducted on the initial scope of the project to determine 1) Is the project on a land owner that requires a special site file search? 2) Has the project area been surveyed previously to current standards? 3) Are there any known historic properties that may not be avoided and would need to be monitored? This basic information is necessary to determine whether a consultant is needed and whether the project may require extra effort (avoidance of areas or new survey). This research informs on the project scheduling and budgeting processes. Depending on how well-defined the project scope is when the background research is being conducted, it may be possible to determine the project effect at that time (e.g., pavement preservation projects with no ground disturbance). More often, the background research is conducted when the scope is too general and many months will pass between the contracting/PEDS and the general timeframe when consultation is conducted (approximately 60% plans).

## **3.2 Initial Project Review; Screening Projects under Attachment 3 of the PA**

Most of the projects ADOT conducts include routine undertakings that have minimal risk for affecting cultural resources under certain conditions. In these cases, the PA provides for those projects to be

screened and exempted from further Section 106 review. The screening process is described in Stipulations VIII.C.1 and Attachment 3 of the PA.

The HPT Staff screens the project, following Attachment 3 of the PA, to determine if the project is exempt from further review. Depending on how well-defined the initial project scope was, this step may occur during the background research phase. A memo is used to document this project screening. The HPT Staff first assesses whether the project scope fits the activities listed in Attachment 3. If so, then the HPT Staff conducts background research (see Chapter 2 for detailed information on conducting background research) on the project area to determine whether the general and specific conditions that govern the applicability of Attachment 3 are met. If the background research conducted for the PEDS is sufficient to make a screening determination, it may not be necessary to conduct additional research.

It is necessary to check all the general and specific conditions for a particular undertaking as part of the screening process. In addition, the following conditions need to be met in order for an undertaking to qualify as exempt from further review:

- The APE has been previously surveyed or is completely disturbed and does not contain any historic properties or is not immediately adjacent to any historic properties, with the exception of historic roads.
- The landowner(s) are signatories to the PA or local governments who are amenable to implementing the PA.
- The APE is within existing ROW.
- The project scope of work will not affect any character-defining feature of a historic road if one is present within the APE.

If the project is exempt from further review, the HPT Staff documents this decision to the memo. There is no need to formally consult with any consulting parties if the project is exempt from further review; however, the HPT Staff conducts informal coordination with any landowners prior to finalizing and documenting the decision. The HPT Staff also forwards the documentation to SHPO in real time, rather than waiting for the submittal of the quarterly report.

### **3.3 Identification of Historic Properties (Stipulations VIII.D):**

If a project is screened following the procedures described in Step 3, and the HPT Staff determines that the project does not meet the conditions in Attachment 3 of the PA, and is thus not exempt from further review, the HPT Staff will first determine if a new survey is required for all or part of the project area.

#### **3.3.1 No New Survey Required**

If there is existing survey of the project area, the HPT Staff reviews the survey report to ensure that it is adequate for the current project and that it meets current professional standards pursuant to SHPO Guidance Points (<https://azstateparks.com/shpo-guidance-points>). If the HPT Staff determines that an adequate survey meeting current standards has been previously conducted within the APE, and the survey did not find anything, the HPT Staff will make a finding of No Historic Properties Affected, as per Stipulation VIII.F.1a of the PA. The HPT Staff will document the decision using a memo. There is no need to formally consult with any consulting parties; however, the HPT Staff conducts informal coordination with any landowners prior to finalizing and documenting the decision, and forwards a copy of the documentation to SHPO.

If the HPT Staff determines that an adequate survey has been previously conducted within the APE, and the survey did identify historic properties, the HPT Staff will follow the steps below (Section 3.4) for assessing the eligibility of sites.

If no previous survey of the APE has been conducted or is available, but the HPT Staff has reason to believe that survey is unwarranted, the HPT Staff will notify SHPO (or THPO) and any land managing agency or Tribe with jurisdiction and provide a justification for that decision and the intention to make a finding of No Historic Properties Affected. If none of the parties object within 15 days, the HPT Staff makes a finding of No Historic Properties Affected, per Stipulation VIII.F.1.a of the PA. The HPT Staff documents the decision using the memo. If SHPO or a land-owning Tribe or agency disagrees with the finding, then the HPT Staff will arrange for a new survey to be conducted.

### 3.3.2 Determining if a New Survey is Needed

If a new survey is required, the HPT Staff will work with the Environmental Planner and PM, as appropriate, to ensure that a consultant is tasked to conduct the survey. If a project is large and complex, and/or the project area has been investigated through multiple previous studies, and/or the area contains several previously identified cultural resources, the HPT Staff may have an on-call consultant provide summary tables of previously recorded sites and prior surveys as well as a map depicting those resources to use within consultation letters as appropriate. For these types of large and complex projects, a CIF may be used to organize the data collection.

In some cases, such as large multi-stage projects that are documented with an EA or EIS, it may be appropriate to provide the consulting parties with detailed information on the results of a literature and file search. In such cases the HPT Staff requests that the consultant formalize the results of the records search in a Class I overview or inventory report. A Class I inventory is used to provide consulting parties an understanding of the project area and the next steps that need to be implemented in order to address gaps in information related to the project area. The HPT Staff ensures that the Class I overview results in a report meeting current SHPO and ASM reporting standards.

While not common, it may be necessary for large multi-stage projects such as EAs or EISs to conduct Class II sample surveys of various alternatives to identify the presence or absence of a significant resource in that vicinity or because not enough information is known from those alternatives. Class II sample surveys are still conducted to modern standards (15–20-meter spaces) but only cover a sample of the project area. A formal report would be prepared outlining the results of the class II survey.

If the project is on land owned or managed by a federal or state land managing agency or Tribe, the HPT Staff will ensure that the new survey also follows applicable guidelines or protocols for identifying historic properties issued by the agency or Tribe. If a survey or any subsequent archaeological investigations requires an ASM permit, then the ASM policy and procedures will apply.

### 3.3.3 Results of a New Survey

#### 3.3.3.1 Negative Surveys:

If a new survey is conducted and no cultural resources are identified within the APE, whoever conducts the survey will prepare a SRSF [SHPO Guidance Point No. 10, 2015 (<https://azstateparks.com/shpo-guidance-points>)]. If the survey was conducted on Tribal or federal land, the HPT Staff will coordinate or consult with the appropriate participating Tribe or agency regarding the adequacy of the survey documentation. Once the documentation is found adequate by the HPT Staff and the landowner, if any,

ADOT will issue a finding of No Historic Properties Affected (Section 3.5.1 below). The HPT Staff will document this finding using a memo. No further consultation is required, and Section 106 review is now complete.

The HPT Staff documents the finding of No Historic Properties Affected (Stipulation VIII.F.1.a) to the quarterly report (see Section 3.5.1 below), and includes the SRSF as supporting documentation in the quarterly report. The HPT Staff uploads (or has the consultant upload) the SRSF to the Historic Preservation Team Portal.

#### **3.3.3.2 Non-Negative Surveys:**

If a new survey identifies cultural resources within the APE, the HPT Staff will ensure that a survey report meeting current reporting standards (ASM, SHPO, and the land manager) is prepared. In cases where the only cultural resources that are identified are either ones that have been previously recorded or ones that ADOT has determined not eligible for inclusion in the National Register of Historic Places, a full survey report is still required. If a survey identifies previously unrecorded cultural resources within the APE, the survey report will, include sufficient information to support HPT Staff making a determination of eligibility for each cultural resource identified (see below).

#### **3.4 Evaluation of National Register Eligibility:**

If cultural resources are identified in the project APE, either newly recorded or previously recorded but not evaluated, the HPT Staff, often assisted by a consultant CRP, applies the National Register criteria to these cultural resources. Where the criteria are met and the site retains its integrity; the cultural resource is recommended as eligible for listing in the National Register. Where the criteria are not met or the site no longer retains its integrity; the cultural resource is recommended as not eligible. Where the National Register status is undetermined, the HPT Staff either 1) recommends additional investigations, through testing or other appropriate means, to recover the necessary information to make a recommendation on eligibility, or 2) decides to treat the cultural resource as if it were National Register eligible for the purposes of the project.

If only a portion of a cultural resource is within the project APE, the evaluation effort should include the resource as a whole when practicable. If evaluating the entire resource is beyond the scope of the project, and there is insufficient information within the APE to assess the eligibility of the resource, the eligibility of the resource should be described as unevaluated or treated as eligible for the purposes of the project.

In making National Register evaluations, the HPT Staff consults with the appropriate participating Tribe or coordinates with the appropriate participating land managing agency, when a project and the cultural resource being evaluated is on land under their respective jurisdictions. The HPT Staff provides the participating Tribe or land managing agency with a recommendation on National Register eligibility for their concurrence. This consultation and coordination may take place informally. See PA Stipulations V and VI for consultation and coordination protocols with Tribes and agencies. Once the landowner is in agreement with the HPT Staff's recommendation, ADOT consults on a formal eligibility determination (see below).

When previously evaluated cultural resources are identified within a project's APE, the HPT Staff will review the previous evaluations to assess whether they remain valid. This review may require a field visit, which may be made by an on-call consultant on behalf of HPT. If the previous evaluations are not valid, the HPT Staff conducts, or arranges for a consultant to conduct, a formal re-evaluation. The HPT

Staff then coordinates or consults with the appropriate participating land managing agency or Tribe if the project is on land under their respective jurisdiction. Prior to official consultation, HPT informally consults with the landowner to make sure they agree with the eligibility recommendations. This is done out of respect for the landowners since ADOT only maintains an easement while the underlying landownership is still retained by the state or federal agency. Once the landowner, if any, concurs with the re-evaluation, the HPT Staff consults with all other appropriate consulting parties on a revised determination of eligibility (see below).

In the event that SHPO or THPO do not concur with the eligibility determination, the HPT Staff will seek to resolve the disagreement. If the disagreement cannot be resolved, ADOT will seek a National Register determination from the Keeper of the National Register in accordance with 36 CFR 800.4(c)(2). The Keeper's determination will be final.

#### 3.4.1 Survey Report and Consultation:

Once the survey report has been written and submitted to ADOT, the HPT Staff reviews the report for adequacy, to ensure completeness, and adherence to report guidance (ASM, SHPO, and land manager).

In reviewing the report, the HPT Staff is responsible for ensuring the adequacy of the report before consulting. Based on the review of the survey report, the HPT Staff may request the on-call consultant to make revisions to the report. The HPT Staff makes requests for revisions via a comment tracking matrix and sends them to consultants. It is also acceptable to make comments using Track Changes in a Word document (if available), or directly on a PDF file or in an email. Regardless of the format of the comments, the HPT Staff puts the comments in the ENV-Drive and makes a note to the PTS indicating that comments were made and when and to whom they were sent.

When the HPT Staff has approved a large survey or data recovery report, the HPT Staff may request that the on-call consultant provide a sufficient number of reports for transmittal to any consulting parties requesting hard copies, as well as file copies for SHPO. ADOT requires an electronic final version to be uploaded into the ADOT Portal. Most reports are sent electronically, except some specific requests from Tribes and agencies who request hard copies. Who is consulted, how they are consulted, and when they are consulted is described in Stipulations V for Tribes, VI for federal and state agencies, and VII.A for other consulting parties. The list of parties to be consulted may include, but is not limited to:

- Federal agencies: BIA, BLM, Forest Service, National Park Service (NPS), Bureau of Reclamation, USACE, etc.
- State agencies: SHPO, Arizona State Parks & Trails, Arizona State Land Department, etc.
- Tribes (use ADOT HPT Claims layer) to assist in identifying appropriate Tribes for consultation. See Notes on Tribal Consultation below for additional information on Tribal consultation.
- Local governments, such as county and city governments, and Certified Local Governments
- Other consulting parties, such as local historical societies

The HPT Staff or consultant will prepare the consultation letters to accompany the survey report. The HPT Team Lead reviews and signs all formal consultation, and the approved letters are prepared for signature. The letter is prepared following the HPT letter formatting guidance. HPT Letter Templates are available to assist in letter preparation and promote consistency. A few examples of project letters are included in Appendix A – Project Documentation Template (see Appendix A3 – No Adverse Effect Example Letter). Section 3.7 below discusses procedures for preparing consultation letters, in addition to memoranda and procedures for tracking and management of these letters and memoranda. The HPT



Staff submits the letter and survey report to the consulting parties for a 35-calendar day review, and, when appropriate, will also include with the report any formal National Register eligibility determinations (Section 3.4) and findings of effect (Section 3.5).

For minor, non-controversial projects (usually processed under the 326 MOU), HPT Staff may consult with SHPO and other consulting parties on the survey results, National Register eligibility determinations, and on findings of No Adverse Effect as a single, combined consultation process, as opposed to consulting with the SHPO and other consulting parties separately on each of the steps of the Section 106 process. Combining many of the steps in Section 106 process is the standard practice for consultation – it is rare and only for large scale projects (e.g., I-11 project) that each individual step of the project is consulted upon separately.

The HPT Staff monitors the progress of consultation, and ensures that the pertinent responses are received in the appropriate time frames. The HPT Staff forwards the results of consultation to the project Environmental Planner, and other parties as appropriate. The HPT Staff is responsible for maintaining an accurate and up-to-date log of all project related consultations in the PTS.

#### **3.4.2 Procedures for Specific Property Types**

All TCP reports and programmatic agreements must be reviewed by the HPT Team Lead or the Cultural Resources Program Manager prior to consultation. When reviewing the project schedule, the HPT Staff works with the Environmental Planner and PM to ensure that adequate time for the HPT Team Lead or Cultural Resources Program Manager review is built into the schedule.

Reports or sections of report that include evaluations of the historic built environment are reviewed by HPT's Architectural Historian. At times when there is no Architectural Historian on the HPT Staff, SHPO's Architectural Historian or a qualified consultant provides the HPT review.

### **3.5 Assessment of Effects**

Once historic properties have been identified within a project APE, whether as a result of new or of previous survey, the next step is to assess whether or not the project will have an effect on these projects. Assessment of effects can follow one of the paths described below. The first is for HPT Staff to make a finding of No Historic Properties Affected. The second is a finding of No Adverse Effect with Standard Conditions, following Attachment 5 of the PA. Where the standard conditions in Attachment 5 do not apply, the HPT Staff makes a finding of No Adverse Effect. The third path is for an HPT Staff to make a finding of Adverse Effect. Each of these paths is discussed in more detail below.

#### **3.5.1 Finding of No Historic Properties Affected (Stipulation VIII.F.1.a)**

If the HPT Staff determines there are no historic properties that could be affected within the project APE or properties are present but not affected, the HPT Staff makes a finding of No Historic Properties Affected after coordinating or consulting with any land-managing agency, SHPO, or signatory Tribe that has jurisdiction over the APE. The HPT Staff writes a memo to document the finding for the Quarterly Report. If concurrence of a landowner is needed, the HPT sends the information to the land-managing agency or Signatory Tribe to provide the landowner with sufficient information to support the proposed finding. After any landowner concurs with the finding, HPT Staff notifies the Environmental Planner of the finding and completes the documentation of the finding for the quarterly report.

Documentation for the Quarterly report is accomplished through a memo. Supporting documentation may include, but is not limited to an SRSF if a new negative survey was conducted for the project,

concurrence from any landowners with the finding and/or the adequacy of an SRSF. If there is no SRSF, it may be appropriate to include a map of the project area.

### 3.5.2 If Historic Properties are Present

If the HPT Staff finds that there are historic properties that may be affected by the project, the HPT Staff makes a finding of No Adverse Effect with Standard Conditions, a finding of No Adverse Effect, or a finding of Adverse Effect, as described below.

### 3.5.3 Finding of No Adverse Effect with Standard Conditions (Stipulation VIII.F.2.a)

The HPT Staff applies the Criteria of Adverse Effect in accordance with Stipulation VIII.F.2.a of the PA. If the effect of the project will not be adverse based on these criteria, the HPT Staff first determines if the standard conditions for avoidance presented in Attachment 5 of the PA can be applied. Avoidance in this context is achieved most commonly through flagging or fencing; however, signage, putting avoidance areas on construction plan sheets, and monitoring are also tools that can be used to ensure avoidance of historic properties or unevaluated cultural resources within the APE. If the standard conditions are applicable, the HPT Staff makes a finding of No Adverse Effect with Standard Conditions, using a memo. The HPT Staff consults or coordinates with participating Tribes and federal or state land managing agencies on this finding when a project is on land under their respective jurisdictions. If the property to be avoided is on Tribal land or may be of religious and cultural significance to Tribes that are not PA participants, the HPT Staff sends standard consultation letters to those Tribes requesting concurrence on a finding of No Adverse Effect.

Following any consultation or coordination with Tribes or land managing agencies, the HPT Staff notifies the Environmental Planner of the finding and completes the memo for the Quarterly report. The project is not subject to further review under Section 106. The HPT Staff works with the Environmental Planner and PM, as appropriate, to ensure that the conditions for avoiding an adverse effect are carried out. The HPT Team Lead tracks those projects through post design services to ensure that funding is available and a consultant is contracted to implement the work, coordinating with the HPT Staff as needed.

Typically flagging, fencing, monitoring, or other avoidance measures are implemented through an on-call consultant. If an on-call consultant was tasked to assist HPT with the cultural resources portion of the environmental clearance, that consultant is the preferred consultant to implement the avoidance measures. The HPT Staff works with the EP and PM as appropriate to add the implementation of avoidance measures to the consultant's task. HPT Team Lead tracks the project through post design and follows up to ensure funding and contracting are in place for monitoring or flagging activities are needed. It is important to start the discussion as soon as it is known that avoidance measures will be needed to ensure that there is sufficient time to modify a task order or create a new one, and to obtain any additional funds that may be needed.

#### 3.5.3.1 Standard Work for Flagging

A standard work document for implementation of flagging, fencing, or other barriers to protect cultural resources during construction can be found in Appendix C of this Section 106 PA Manual. The appendix details a set of standard procedures that consultants follow when installing flagging or other barriers. This document is sent to a consultant along with a request for a task order or task order revision, so the consultant is fully informed of ADOT expectations and can develop a realistic scope and fee for the task.

#### 3.5.3.2 Using Construction Funds for Environmental Commitments to be Implemented during Construction

In general, the implementation of environmental commitments during construction, such as flagging or monitoring, are paid for with construction funds, typically the 01C funding phase. As construction funds are generally not yet open at the time that the decision is made, the HPT Staff needs to work proactively with the Environmental Planner and PM to ensure that a plan is in place for addressing the consultant task order when the construction funds are available. When the work will be done on Environmental Planning's on-call contract, the Environmental Planning Project Delivery Manager is included in the process. If the work is to be done under a Project Development on-call, the project PM is included in the process. An email from the Resident Engineer is needed in order to utilize construction funds. As the RE is generally not assigned to the project until the contract goes out to bid, the HPT Lead will coordinate with the Environmental Planner.

#### 3.5.3.3 Planning for Monitoring during Construction

When monitoring during construction is planned, the HPT Staff ensures a monitoring plan is developed and necessary agencies have received and approved the plan. If a project is taking place within the boundaries of an archaeological site that is listed in or eligible for inclusion in the A/NRHP, and the site is on state land or a subdivision of state land (i.e., county land or municipal land), a project-specific permit and a monitoring plan is required from the Arizona State Museum. Although the monitoring itself is paid for using construction funds, developing and consulting on the monitoring plan and obtaining the permit are done during the design phase, as waiting until the construction phase is open would result in significant delays. The HPT Lead tracks the project to identify the person or persons who will be responsible for the task order for a consultant to develop a monitoring plan and obtain a permit, and a task order for conducting the monitoring and subsequently preparing a monitoring report if these phases are to be addressed through separate task orders.

#### 3.5.3.4 Follow up on Mitigation Measures

Because the tasks involved in obtaining funding and getting a consultant under contract to implement the avoidance measures may be spread out over time, and some of them cannot be fully addressed until construction funds are available, the HPT Team Lead tracks these projects and ensures the relevant HPT Staff coordinates when necessary. A PTS entry is made that briefly summarizes the action taken.

#### 3.5.4 Finding of No Adverse Effect (Stipulation VIII.F.2.b)

When the standard conditions in Attachment 5 do not apply, but the project will have no adverse effect on historic properties, the HPT Staff makes a finding of No Adverse Effect. The HPT Staff consults, using a standard consultation letter, on the finding with SHPO, or the THPO if the property is on Tribal land, and other consulting parties to the undertaking, regardless of whether the consulting parties are participants in the PA. The consultation letter requests the SHPO or THPO and other consulting parties to concur with the finding of No Adverse Effect. The SHPO and the consulting parties who are participating in the PA have 15 calendar days to submit their concurrence or comments to ADOT. Non-participating consulting parties are advised in the letter of a 35-day consultation period. The HPT Staff notifies the Environmental Planner when the letters have been sent and documents these actions in a PTS entry.

When the SHPO or THPO does not concur on the finding of No Adverse Effect, ADOT will seek to resolve the disagreement. Should the parties continue to object, the HPT Team Lead requests the ACHP's review pursuant to 36 CFR 800.5(c)(2)(i).

Environmental commitments that avoid or minimize impacts to the historic property(ies) result in a Section 106 finding of No Adverse Effect. EP acquires written commitments from both the Project Manager and the Resident Engineer. These commitments are attached to the bid documents for construction.

In cases where the No Adverse Effect finding is dependent on alterations to an historic property being consistent with the Secretary of the Interior's Standards, the HPT Staff works with the project design team to make sure that the designers are aware of the appropriate Standards and that the HPT Staff and/or a consultant CRP with appropriate credentials reviews the plans as they develop to ensure they are consistent with the Standards. If any commitment or mitigation measure needs to be included in the CE and/or the contract documents, the HPT Staff works with the Environmental Planner to develop the language, and the Environmental Planner ensures that the HPT Staff reviews the relevant documents before they are finalized.

In cases where an archaeological monitor is required, the HPT Staff coordinates with the EP, the PM and the RE to ensure that an appropriate commitment or mitigation measure is included in the CE and in the contract documents. The HPT Team Lead monitors the projects between design and construction and ensures that a qualified consultant is procured to carry out the monitoring, and to develop a monitoring plan.

#### 3.5.5 Finding of Adverse Effect (Stipulation VIII.G.1.a)

If the criteria of adverse effect in 36 CFR 800.5(a)(1) are met, the HPT Staff makes a finding of Adverse Effect. A project adversely affects a historic property if it may alter the characteristics that qualify the property for inclusion in the National Register in a way that would diminish the integrity of the property. Adverse effects can be direct or indirect, and also include reasonably foreseeable impacts that may occur later in time, be farther removed in distance, or may be cumulative. A finding of Adverse Effect requires consultation letters to SHPO, or the THPO if the property is on Tribal land, and other consulting parties to the undertaking, regardless of whether or not they are participants in the PA. The HPT Staff, often with the assistance of a consultant, prepares letters that:

- Inform the consulting parties of the finding of Adverse Effect
- Propose to resolve the adverse effect either through:
  - The use of Standard Measures for Resolving Adverse Effects (Stipulation VIII.G.1), which is an alternative to the preparation of a Memorandum of Agreement (MOA) or project-specific Programmatic Agreement (PA). These Standard Measures are listed in Attachment 6 of the PA; or
  - The development of a project-specific MOA or PA
- Requests concurrence with the finding of effect and the proposed resolution of the adverse effect.
- If an archaeological site is being adversely impacted by the project, Section 4(f) archaeological exception language should be included in the SHPO or THPO consultation letter (see Section 5 for more information).

- If a historic site is being adversely impacted by the project, determine whether it is 4(f) property, and determine if the project is having a “use” (see Section 5 for more information).

#### *3.5.4.1 Standard Measures for Resolving Adverse Effects*

The use of Standard Measures for Resolving Adverse Effects can occur when the portion of the project where the adverse effect will occur is on land that is ADOT-owned or easement across the lands of a PA participant. After determining that use of Standard Measures is appropriate for a given project, the HPT Staff sends a consultation letter to all consulting parties for the project proposing the use of Standard Measures in lieu of a project-specific MOA or PA. The proposal can be included in the letter regarding the finding of Adverse Effect. The letter includes information on the undertaking, each property and its significance, the adverse effect to each property, and a justification for resolving adverse effects using Standard Measures.

Written concurrence with the proposal to use Standard Measures is required from SHPO or THPO, as applicable, and any party that is a land manager or permitting agency with a role in authorizing the undertaking. After written concurrence is received from those parties, the Section 106 process is completed, and ADOT moves forward with implementing the Standard Measures in accordance with Attachment 6 of the PA. It is necessary for ADOT to notify the ACHP of a finding of Adverse Effect if Standard Measures for Resolving Adverse Effects will be followed.

If the adverse effect to be resolved through the use of Standard Measures is on one or more archaeological sites, ADOT, often with the assistance of a consultant, will prepare an historic properties treatment plan. If the adverse effect is to a historic building or structure, ADOT will consult on the use of Historic American Buildings Survey/Historic American Engineering Record documentation to resolve the adverse effect. Stipulation VIII.G.1 describes the consultation process for the proposed use of each of these Standard Measures.

#### *3.5.4.2 Resolution of Adverse Effects through a Project-Specific PA or MOA*

If there is not agreement among the parties regarding the use of Standard Measures, or if the HPT Staff determines that the use of Standard Measures is not appropriate, ADOT will resolve adverse effects through the preparation of a project-specific MOA or PA following Stipulation VIII.G.2. This path should be taken only when the use of Standard Measures is not applicable or appropriate. An MOA is used for a project when the impacts to historic properties are known. A project-specific PA is used when a project will impact historic properties, but the nature of these impacts is not yet known. A project-specific PA is also used when implementation of measures to resolve the adverse effects will require extensive post-NEPA decision making because of issues associated with property access or the project design process (e.g., for design-build projects). A project-specific PA can also be used early in the project development process when ADOT anticipates a complex consultation process. The steps for developing a project-specific MOA or PA are outlined below.

- The HPT Staff first prepares a conceptual outline of the MOA or project-specific PA. This can be in the form of an outline, a bulleted list, or a narrative description that describes the primary purpose of the agreement document and provides a general outline of its proposed content, including proposed treatment measures, as well as identifying the proposed

participants and their respective roles. The conceptual outline is a substantive document, not just a list of the types of preamble clauses and stipulations to be included.

- Typically, the signatories to the agreement are ADOT, the SHPO, and if participating, the ACHP. If the affected properties are on Tribal lands, the Tribe will be a signatory to the agreement. If the affected properties are on federal lands, the federal land managing agency may be a signatory or invited signatory to the agreement. A signatory is a federal agency that has a role or responsibility in the project.
- The invited signatories include any other parties who have a responsibility to carry out any stipulation in the agreement. Tribes can also be an invited signatory or a concurring party for projects not on Tribal lands. Concurring parties have participated in the consultation associated with the preparation of the agreement, and have an interest in the project, but do not have responsibilities stipulated in the agreement document.
- The HPT Staff requests an internal review of the outline from both the Environmental Planner and the HPT Team Lead or Cultural Resources Program Manager.
- Once there is internal agreement regarding the purpose, content, and participants in the agreement document, the HPT Staff discusses with SHPO, any landowners, or other entities with signatory roles regarding the conceptual outline.
- If any signatory has substantive comments or issues to be resolved, the HPT Staff schedules a comment resolution meeting or teleconference.
- Once the signatories are in agreement regarding the purpose and content of the agreement document, the HPT Staff prepares a consultation letter for all the consulting parties to the undertaking consulting on the need for a PA or MOA and the conceptual outline, and requests a response within 35 days. Typically, the consultation for the project has already been sent out on the project finding of Adverse Effect. If consultation on the finding of adverse effect has not yet occurred, then in order to save time and effort, the project finding of effect and conceptual outline of the agreement document (or use of Attachment 6) are included in the consultation letter. The HPT Team Lead reviews the draft letters. The HPT Staff prepares the letters for the HPT Team Lead's signature, and processes the signed letters for mailing. A consultant may assist with these tasks as needed.
- The HPT Team Lead notifies the ACHP of the finding of adverse effect using the ACHP's Electronic Section 106 Documentation Submittal System (e106). The e106 form and guidance for using it are available on the ACHP website [<https://www.achp.gov/e106-email-form>]. The ACHP will notify the HPT Staff within 15 days of its decision of whether to participate in consultation regarding the resolution of adverse effects.
- After the consultation period on the conceptual outline has ended, the HPT Staff takes into account any responses received from consulting parties and develops a draft agreement document. A consultant CRP may assist with this effort as needed.
- Preparation of the draft agreement takes place in coordination with the Environmental Planner, PM, and District as appropriate, to ensure that a consultant is able to carry out any measures stipulated in the agreement that will require the services of a consultant.
- Once developed, the HPT Staff submits the draft agreement document to the HPT Team Lead. After approval by the HPT Team Lead, the HPT Staff or the consultant CRP prepares a consultation letter, following internal letter review and processing guidance, to the consulting parties for a 35-day review and comment period.

- After the consultation period has ended, the HPT Staff either finalizes the agreement document or engages in comment resolution if necessary. It is important to achieve consensus among signatories. If ADOT and SHPO fail to agree on the terms of an agreement, ADOT requests the ACHP to participate in consultation.
- While it is desirable to have agreement from the potential concurring parties as well, if it is not possible to achieve consensus among all consulting parties, it is acceptable to move on after a reasonable attempt at negotiating, as long as all the signatories are in agreement. All negotiating efforts with consulting parties must be documented to the EP Drive.
- Once the final MOA or project-specific PA is completed, it is executed through the signatures of the full signatories. The date of execution is the date that all the full signatories have signed. In general, the parties to the agreement document sign the document in the following order:
  - ADOT
  - Landowner
  - Others
  - SHPO
  - A copy of the executed agreement is sent to the ACHP for filing.

### **3.6 Additional Provisions under the PA**

There are several additional provisions in the PA. These include, but are not limited to, procedures for changes in project scope, protocols for installing or replacing fencing and signage within the boundaries of eligible archaeological sites or other historic properties (Stipulation XI.A.1), and procedures for Local Public Agency projects. These additional provisions are described below.

#### **3.6.1 Changes in Project Scope (Stipulation IX of the PA)**

Whenever the scope of a project is revised (e.g., design changes, utility relocation, addition of geotechnical investigations, or addition of new ROW), including during construction, the CRP or HPT Staff will determine whether or not these changes require modifying the APE or revising the assessment of project effect; and will decide if re-consultation is appropriate. This decision-making process is documented with a memo.

- If the project changes do not require modifying the APE or finding of effect, then no further consultation with the project consulting parties will be required, using a memo. The HPT Staff notifies participating Tribes and federal or state land managing agencies of this finding when a project is on land under their respective jurisdiction. Following coordination with Tribes or land managing agencies, the HPT Staff notifies the EP of the finding and completes a memo. The project is not subject to further review under Section 106.
- If the changes do require modifying the APE, the HPT Staff will determine whether a new survey is warranted. Section 3.3 of this Section 106 PA Manual and Stipulations VIII.D of the PA address issues to be considered in making this determination. The HPT Staff consults or coordinates with participating Tribes and federal or state land-managing agencies in making this determination when the scope change is on land under their respective jurisdiction.
- If the changes do require modifying the APE, but the HPT Staff determines that an adequate survey has been previously conducted within the area of the modified APE, and the survey did not identify any cultural resources, no new survey will be required. The HPT Staff

completes the memo and documents this decision in the project file, and in the quarterly report.

- If the changes do require modifying the APE and the HPT Staff determines that an adequate survey has been previously conducted within the area of the modified APE, and the survey did identify cultural resources, the HPT Staff follows the process in Sections 3.4 and 3.5 above, as needed.
- If the changes do require modifying the APE, and no previous survey report is available, but the HPT Staff determines that the area of the modified APE does not warrant a new survey, the HPT Staff will:
  - Notify SHPO or THPO as applicable, and any participating land-managing agency or Tribe with jurisdiction of the determination that a new survey is unwarranted, and the reasons for the decision.
  - Should any of these parties object to this determination within 15 calendar days of receiving this information from the HPT Staff, the HPT Staff will follow the processes in Sections 3.3 through 3.5 above, as needed.
- If the changes do require modifying the APE, and a new survey is required, the HPT Staff arranges for a survey to be conducted, following the procedures described in Section 3.3.3 above. If no additional cultural resources are identified as a result of the new survey, and the scope revision will not alter the findings of effect for the project, then the HPT Staff ensures that a SRSF is prepared, and documents the survey and the decision that no additional work is necessary using the memo. After coordinating or consulting with any landowners regarding the adequacy of the survey and the SRSF, and the determination that no additional work is warranted, the HPT Staff notifies the Environmental Planner of the determination and finalizes the memo for the Quarterly Report.
- If the scope changes do require modifying the APE and a new survey is conducted resulting in the identification of cultural resources, and the findings of effect for the project may be altered, the HPT Staff follows the review and consultation process as described in Sections 3.3 through 3.5 above, as applicable.

### 3.6.2 Preconstruction Geotechnical Testing (Stipulation X of the PA)

Geotechnical testing is conducted prior to road construction in order to collect data needed for design purposes. As such, consultation for geotechnical testing may occur before formal Section 106 consultation on a project or as the initial consultation on the project.

- The HPT Staff assigned to the project involving preconstruction geotechnical testing screens the geotechnical testing to determine if the testing meets the conditions listed in Attachment 3 of the PA, and therefore requires no further review. The PA memo is documented in the Quarterly PA Batch reports. If the testing does not meet the conditions listed in Attachment 3 of the PA, the HPT Staff carries out the processes in Sections 3.3 through 3.5 above, as appropriate.

### 3.6.3 Protocol for Installing or Replacing Fencing and Signage (Stipulation X1.A.1 of the PA)

Installing or replacing fencing and signage within road ROWs is a common undertaking either as a separate task or as part of larger projects.



- The HPT Staff assigned to the project involving the installation or replacement of fencing or signage, screens the project to determine if the project meets the conditions listed in Attachment 3 of the PA, and therefore requires no further review per Section 3.2 above. If the project does not meet the conditions listed in Attachment 3 of the PA, the HPT Staff carries out the processes in Sections 3.3 through 3.5 above, as appropriate. If the fencing or signage is within the boundaries of a known eligible or unevaluated archaeological site, the HPT Staff follows the protocols in Attachment 7 of the PA.

#### 3.6.4 Recreational Trails (Stipulation XIX of the PA)

The Recreational Trail Program (RTP) is a grant program funded through FHWA and is administered by Arizona State Parks & Trails (ASP&T). ADOT provides environmental review (including cultural resource review) for the RTP. Stipulation XIX and Attachment 8 of the PA outline ADOT's review role for the RTP and state that ADOT will follow Stipulations VIII of the PA to meet Section 106 requirements for RTP projects.

The process for RTP projects will largely follow the procedures outlined above, with exceptions and additional guidance outlined below.

- RTP projects are not tracked in PTS. The Environmental Planner, along with the HPT Staff working on RTP projects are responsible for creating and maintaining a spreadsheet or other tracking system for these projects and for saving all documents and email in the EP-Drive.
- RTP projects are not given ADOT TRACS Nos.; instead, they are given six-digit RTP Nos. (ex. 471601) that should be used on all email correspondence and documentation in lieu of a TRACS No. RTP projects are assigned Federal-aid numbers that should also be used on all email correspondence and documentation.
- RTP projects are approved under CE Assignment (326 MOU signed January 3, 2018). FHWA reserves certain responsibilities for government-to-government consultation with Indian tribes (23 USC 326 CE Assignment MOU, II C.).
- RTP applications are submitted by project proponents to ASP&T for initial review at the beginning of each calendar year. After initial screening, applications recommended for funding are submitted to ADOT for environmental review beginning in April, with applications arriving for review through the rest of the calendar year as they are approved by ASP&T.
- Applications are awarded in fiscal year cycles with applications submitted at the beginning of the calendar year to be funded in the following fiscal year. Environmental clearance is required by the end of that fiscal year. For example, an application submitted in March 2017 will need to receive environmental clearance by the end of FY18 (June 30, 2018).
- RTP applications include an ASP&T grant application packet, project location maps, photographs, a Cultural Clearance Review Form (CCRF), and supporting documentation.
- The CCRF is completed by the applicant's cultural resource staff (or other staff if there is no cultural resource staff). The purpose of this document is to summarize all the information needed to complete Section 106 review, including land ownership, scope of work, previous survey, presence of cultural resources, etc. All surveys, HPIFs and previous consultations are required attachments to the CCRF.

#### 3.6.4.1 RTP Application Review Process:

- When a new RTP project is received, the ADOT Environmental Planner creates a project folder in the EP-Drive. The State Parks Grants Coordinator notify the ADOT Environmental Planner, ADOT HPT Staff, and ADOT Biologist via e-mail when a new application is ready for review. The ADOT team members access the application through the on-line Web grants System.
- The HPT Staff reviews the application. Key items to check for include:
  - Scope of work consistency between the application, the CCRF and the CE.
  - Consistency between the scope of work and project location maps.
  - A complete list of land owning/managing agencies in the CCRF.
  - If the CCRF identifies surveys, HPIFs or previous consultation, check to see that all documentation is included and that surveys are adequate and cover the entire project area.
  - Justification for lack of survey (ex. previous disturbance) in the CCRF if no survey or only partial survey.
  - If a historic property is identified *adjacent* to the project area, that information is provided in the CCRF explaining how the property will be avoided or why the project does not have the potential to affect the property.
  - The cultural resources questions in the draft CE are answered correctly.
- The HPT Staff conducts background research, as needed, to supplement or verify the information included in the application. However, it is the responsibility of the applicant, not ADOT, to supply all required information.
- Questions about the application or requests for missing documentation are directed to the ADOT Environmental Planner or to ASP&T, copying the ADOT Environmental Planner. ASP&T then contacts the applicant.
- Once all required information is gathered, the HPT Staff applies the appropriate subparts of Stipulation VIII.
- The HPT Staff completes the appropriate review sections in the on-line Webgrants system; ADOT/SHPO Cultural Review section and the Section 106 Memo. The cultural portion of the RPT documentation is to be put in the quarterly report, as appropriate. Once these are completed and dated by the HPT Staff, the ADOT Environmental Planner is notified that the Section 106 review is complete.
- Environmental commitments, if needed, can be added to the Categorical Exclusion – CE checklist section (NEPA) in the ‘Final Environmental Commitments’ box.

#### 3.6.4.2 Applying PA Stipulation XII:

- In general, Stipulation XII should follow the process outlined above, with exceptions noted below.
- Consulting Parties:
  - Consulting parties for RTP projects generally consist of SHPO and land managing agencies. ADOT is continuing FHWA’s previous determination that, due to the limited scope and nature of RTP projects, Tribal consultation is not required for RTP projects unless Tribal land is involved.

- For many RTP projects, the project sponsor is a non-profit third party applying for a grant to work on federal, state, county or municipal lands. In this instance, following FHWA's previous decision, ADOT has determined that the non-profit third party does not need to be a consulting party as they have no official role in Section 106 consultation. Instead, the land owning or managing agencies are consulted.
- For many RTP projects located in state, county or municipal parks, there is underlying land ownership. For example, a State Park may be operated on State Trust land through a lease from ASLD. In this instance, both ASP&T and ASLD are consulted.
- For PA signatories, there is a question on the CCRF asking which PA stipulation they feel applies to the project. If the HPT Staff agrees with this finding, the CCRF can be used as a record of informal consultation on this finding. If the HPT Staff does not agree, then additional informal consultation will be required.
- For Screened Undertakings (Stipulation VIII.C.1), the class of undertaking in Attachment 3 that most commonly applies to RTP projects is listed under "Miscellaneous" as "Bicycle, Recreational, Pedestrian Trails: Construction, rehabilitation, and widening of existing bicycle and pedestrian trails, walkways and amenities."
- Stipulation XII and Attachment 8 do not need to be cited in consultation letters or memos; only the appropriate subparts of Stipulations VIII.

### 3.6.5 Local Public Agency Projects (Stipulation XIII of the PA)

ADOT is responsible and accountable for ensuring that Federal-aid requirements are met on LPA projects. EP is responsible for providing guidance for the preparation of environmental documents for Federal-aid projects in compliance with the National Environmental Policy Act and other environmental laws, including Section 106.

- The HPT Staff ensures that the Section 106 requirements for LPA projects are met in accordance with the applicable provisions of the PA, including the steps described in Section 3 above.
- For LPA projects where the HPT Staff makes a finding of No Adverse Effect or No Adverse Effect with Standard Conditions, the HPT Staff:
  - Consults with the SHPO at the time that the finding is made and gives the SHPO the opportunity to request continuing consultation as design on the project progresses. This process replaces the old process of sending staged plans to SHPO for all LPA projects with findings of No Adverse Effect.
  - For projects with a finding of No Adverse Effect with Standard Conditions, this consultation may be conducted informally through email or telephone calls and documented for the project file and the quarterly report.

### 3.6.6 Post-Review Discoveries (Stipulation XIV)

Projects that include data recovery as a means of resolving adverse effects should have language regarding post-review discoveries included in project-specific agreement documents and in historic property treatment plans for projects that will resolve adverse effects through the use of Standard Measures (Stipulation VIII.G.1 and Attachment 6). That language should be consistent with Stipulation

XIV in cases where the adverse effect will take place on land owned or managed by a PA signatory (including ADOT).

If a discovery includes human remains, it is important to follow guidance below on the treatment of human remains.

### 3.6.7 Treatment of Human Remains (Stipulation XV)

Projects that include data recovery at archaeological sites where the presence of human remains is likely to require a Burial Agreement with ASM if the project is on state, county, or municipal land, and require a Native American Graves Protection and Repatriation Act (NAGPRA) Plan of Action if the project is on Tribal or federal land. Details for developing such agreements are included in Stipulation XV of the PA, and details regarding the treatment of human remains are included in Stipulation XV.

Projects where the presence of human remains was not anticipated and there are no Burial Agreements or NAGPRA Plans of Action should follow the guidance and stipulations for post-review discoveries (above) and the stipulations for treatment of human remains (Stipulations XV). Note that the stipulations differ depending on the land jurisdiction where the human remains are encountered.

### 3.6.8 Emergency Situations (Stipulation XVI)

Procedures for emergency situations as described in Stipulation XVI are applicable to situations declared emergencies by the President of the United States, the Governor of Arizona, a Tribal government of a resident signatory Tribe in Arizona, of the ADOT State Engineer. See Stipulation XVI for details on addressing declared emergencies.

More common than declared emergencies are urgent situations that are not declared, but that require immediate or very quick action to ensure public safety or continued operation of a state highway. In such cases, the HPT Staff reviews the situation. If it is a situation that can be addressed through an action that is documented to the PA quarterly report, the procedures described in Sections 3.3 through 3.5 above are followed as appropriate. If SHPO or a landowner is not responsive, it is acceptable to move forward after leaving both voice and email messages of the intention to do so and the reason for the urgency.

If the situation is one that cannot be addressed through documentation to the quarterly report, the HPT Staff contacts SHPO/THPO and any landowners and discusses the situation, along with determination and proposed action to be taken. If SHPO/THPO and any landowners agree, it is acceptable to move forward with informal consultation in these situations, with formal consultation to follow as appropriate.

### 3.6.9 Confidentiality (Stipulation XVIII)

Stipulation XVIII addresses confidentiality of information and documents and the legal authorities for keeping information and documents confidential. As a matter of general practice, ADOT adheres to the conditions of Stipulation XVIII through the following procedures:

Specific information regarding the location of archaeological sites is protected and is not included in publicly available documents, including Section 106 consultation letters, categorical exclusions, and NEPA documents.

Survey reports have limited distribution, and are generally restricted to ADOT consultant CRP, and consulting agencies and Tribes. They are filed in the EP-Drive and in the Portal. Access to documents in

the Portal is restricted to CRPs, while the EP-Drive is restricted to EP Staff regardless of position. It is understood that non-CRP EP Staff are able to access such documents; however, they are not authorized to distribute the documents to project teams or others without going through HPT Team Lead.

Avoidance areas are shared with project teams on a need-to-know basis, with the understanding that it is not possible to avoid something without knowing where it is. Avoidance areas are described in mitigation measures or environmental commitments, and may also be depicted on project plans. They are labeled or described as avoidance areas, and do not include site numbers. When appropriate and practicable, a buffer is generally included around a site to ensure that the avoidance area encompasses all significant deposits. A standard work document for avoidance flagging is located in Appendix C.

Sometimes Tribes share information with ADOT regarding culturally sensitive information that they do not want shared with all Section 106 consulting parties. HPT Staff has two options for safeguarding the confidential information while still sharing sufficient information with consulting parties to support findings of effect and determinations of eligibility. One option is to have two versions of reports describing sensitive resources; one version is a full disclosure version that is distributed to limited parties identified in consultation with the Tribe or Tribes sharing the information, and in consultation with SHPO when applicable. The other version is highly redacted version that is disseminations to remaining consulting parties.

For federally funded projects, Section 304 of the NHPA protects certain sensitive information about historic properties from disclosure to the public when such disclosure could result in a significant invasion of privacy, damage to the historic property, or impede the use of a traditional religious site by practitioners. Section 304 protects information about the location, character, or ownership of historic properties. For state funded projects, A.R.S. § 41- 841; § 41-844; and § 39-125 protects only the location of archaeological sites.

#### 3.6.10 Reporting on Activities under the PA – Quarterly Reporting and Annual Reporting (Stipulation XVII.B)

HPT Team Lead will ensure that HPT Staff document all decisions and findings in the folders on the EP-Drive [\\9152\H\_P\_T\PA Documentation] and will be responsible for delivering the PA Quarterly Report to the PA signatories, see Appendix A4.

No later than four weeks after the end of each quarter (September 30, December 31, March 31, and June 30), a designated HPT Staff member will compile a list of projects exempted from individual consultation. These include projects exempted from further review under Steps 3 and 6 above, in addition to projects involving changes in project scope. The HPT Team Lead is responsible for reviewing the compiled documentation and submitting it to the signatories and concurring parties.

The quarterly report consists of the PA tracking table of all properties, plus any additional documentation that is necessary to support the findings. Examples of supporting documentation include, but are not limited to maps, SRSFs, and emails.

All memos and supporting documentation to be reported quarterly must be in project folders and in the EP-Drive [\\9152\H\_P\_T\PA Documentation]. Appendix A4 provides an example of a PA Batch Report.

#### **3.6.10.1 Annual Report**

- The HPT Team Lead will compile an annual report for submission to the signatories and concurring parties to the PA. Information in the report will include, but is not limited to a summary of actions taken under the PA, including all findings and determinations, accomplishments, public objections, etc. in the previous year. All actions taken under the PA must be documented in project folders on the EP-Drive under [\\9152\H\_P\_T\PA Documentation].
- The initial annual report will be prepared following completion of the first full state fiscal year under the PA. The HPT Team Lead will submit the annual reports to the signatories and concurring parties to the PA no later than December 31 of each year. The parties will have 30 calendar days to provide comments. If a signatory or concurring party does not respond within the comment period, ADOT will follow-up to verify that the party has no comments. If the attempt at follow-up consultation is unsuccessful, it is assumed that the party has no comments on the annual report.
- The Cultural Resources Program Manager will ensure that the annual report is posted on the Environmental Planning website so that the annual report is available for public inspection at the time it is submitted to the signatories and concurring parties to the PA. The web posting will include a provision that allows the public to comment on the report.

#### **3.7 Consultation Correspondence and Memoranda**

- Formal consultation letters are prepared by the HPT Staff or consultant CRP following ADOT's letter guidelines. The HPT Staff ensures that all correspondence has the most updated project and TRACS numbers. The HPT Staff prepares letters as a Microsoft Word document, but final consultation letters are sent as PDF.
- The HPT Team Lead reviews the consultation letters and provides any comments to the HPT Staff. The HPT Staff or consultant CRP revises the letters accordingly and prepares the final letters on current ADOT EP letterhead for the HPT Team Lead signature.
- Most letters are sent to consulting parties electronically as an email attachment; any enclosures that are not too large for email are also sent as attachments. If an enclosure is too large to be sent via email, the HPT Staff or consultant CRP loads the report into ShareFile and provides the consulting parties with a link to download the report. There are some consulting parties who prefer to receive hard copies of consultation letters and enclosures, or electronic copies of letters but hard copies of reports. The Contacts page in the HPT Portal lists these specific protocols for each consulting party and is updated whenever a protocol changes.
- When letters are sent to consulting parties, the HPT Staff makes an entry in PTS that includes the date the letters were sent, the subject of the letters, and lists any enclosures and how they were sent.
- When responses from consulting parties are received, the HPT Staff files the responses in the EP-Drive project folder and sends a copy of the response to the Environmental Planner and the consultant. The HPT Staff makes a PTS entry of the response, noting if it was a concurrence or summarizing any response that is not a concurrence.

### 3.8 Project Closeout

When concurrence and response letters are received from SHPO or other consulting parties, the HPT Staff transmits the PDFs of the concurrence or response letter (and, if necessary, the original outgoing letter) via email to the consultant, the project Environmental Planner and other appropriate staff within ADOT. The letters are also uploaded to the EP-Drive project folder, and receipt of the letter is noted in the PTS. Either in real time or at the conclusion of Section 106 consultation, the consultant CRP or the HPT Staff uploads the letters, PA memos, site information, and reports to the HPT Portal.

At the conclusion of the Section 106 process, the HPT Staff prepares a Close-Out memorandum to the Environmental Planner and the on-call consultant if an on-call consultant is participating in the project. The purpose of the memorandum includes the following:

- Notification that the Section 106 process has been concluded and any aspect of the NEPA process that is dependent on Section 106 completion can move forward.
- Identification of any environmental commitments that are to be included in NEPA or contract documents.
- A request to the consultant to enter any survey, cultural resource, or consultation information into the HPT Portal within two weeks, unless the HPT Staff chooses to do the uploads without consultant assistance. If the consultant is tasked with uploading documents into the Portal, the HPT Staff sets a reminder to check on the status of the upload after two weeks. If the HPT Staff is doing the uploads, the uploads should be done within two weeks.

Templates for Close-Out memoranda are on the EP-Drive [\\ENV\9152\H\_P\_T\Templates], see Appendix A5.

## 4 SECTION 106: STANDARD (NON-PROGRAMMATIC AGREEMENT) PROCESS

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### 4.1 Introduction

This section presents the procedures for Section 106 compliance for Federal-aid Highway Program (Program) projects that do not fall under the 2020 Section 106 Programmatic Agreement. The types of projects that do not fall under the PA include:

- Program-funded projects on Tribal lands in which the Tribe is not a signatory to the PA.
- Program-funded projects on lands managed by a federal, state, or local agency that is not a signatory to the PA.
- When ADOT determines that consultation will be carried out following the standard Section 106 process and not the process stipulated in the PA.

It should be noted that a Program-funded project may be located within lands of various jurisdictions:

- Within ADOT ROW that is easement from a Tribe.
- Within ADOT ROW that is easement from a land managing agency.
- Within ADOT-owned ROW.
- Outside of ADOT ROW, on lands owned or managed by private entities, Tribes, or agencies.

For those portions of a project outside of lands managed by Tribes and/or agencies that are signatories to the PA, the HPT Staff will follow the standard Section 106 process described in this section of the Section 106 PA Manual. The HPT Staff will follow the stipulations of the PA (as described in Section 3.0 above) for all other portions of the project. Additionally, the HPT Staff uses the standard Section 106 consultation process when consulting with non-Signatory Tribes that attach religious and cultural significance to any historic properties that may be affected by an undertaking, regardless of whether the project is on Tribal land or not.

The procedures presented in this section of the Section 106 PA Manual are similar to those under the PA. The primary difference is that many of the decisions and findings under the standard process are made by ADOT in consultation with the SHPO and other consulting parties, and when appropriate, the Advisory Council on Historic Preservation. This section may also involve Section 4(f) determinations – see also Section 5 for more information on Section 4(f).

Before discussing the standard, non-PA Section 106 process, it is important to recall how ADOT consults with federally-recognized tribes.

#### 4.1.1 Tribal Consultation

- The HPT Staff should use the Tribal Claims layer in the HPT Portal to identify which Tribe or Tribes need to be consulted on a project. The Tribal Claims layer depicts the areas of the state in which Tribes have made claims to ancestral lands. As there are overlapping claims, the HPT Staff should identify the general project location on the Tribal Claims layer.
- The BIA is included in consultation when the project is on Tribal land and there is new ROW, a TCE, or if San Carlos Irrigation Project involved. In these situations, the BIA is consulted directly, as is the Tribe on whose land the project is taking place.
- In conducting consultation with Tribes, either when a project is on Tribal land or otherwise, follow the individual consultation protocols described in the HPT Portal, under the Contacts



tab. These protocols include contact information and indicate to whom consultation is addressed, who receives copies, and to whom reports are transmitted. Unless otherwise noted in the protocols, consultation is transmitted electronically.

- Currently, there are ten federally-recognized Tribes that have National Park Service certified Tribal Historic Preservation Officer programs in Arizona:
  1. Colorado River Indian Tribes
  2. Gila River Indian Community
  3. Hopi Tribe
  4. Hualapai Tribe
  5. Navajo Nation
  6. Pascua Yaqui Tribe
  7. Salt River Pima-Maricopa Indian Community
  8. San Carlos Apache Tribe
  9. Tohono O’odham Nation
  10. White Mountain Apache Tribe

An eleventh THPO, Zuni Pueblo, has Tribal lands in Arizona but is headquartered in New Mexico.

- ADOT consults with THPOs about cultural resources on Tribal lands in the same way as it consults with SHPO; and, ADOT does not consult with SHPO when a project is entirely on lands of a Tribe that has a THPO.
- An example of a standard consultation letters to Tribes is available on the EP-Drive [Z:\ENV\9152\H\_P\_T\Templates], see Appendix A6. Note that initial consultation letters ask Tribes to indicate if there are any concerns regarding traditional cultural properties or other properties with religious or cultural significance in a project area, and request a response within 30 days of receiving the letter.
- Section 106 stipulates that a “good faith effort” must be made to consult with Tribes. ADOT interprets “good faith effort” to mean that if a Tribe does not respond to written consultation within the requested response period, the HPT Staff follows up with emails and telephone calls. If a Tribe does not respond to either telephone or email messages, a final phone call and email is sent informing the Tribe that unless the HPT Staff hears from the Tribe within a defined period of time (time period can be adjusted depending on project schedule concerns), ADOT will assume the Tribe does not have concerns regarding the project, and will move forward.

#### 4.1.2 Project Initiation and Background Research

The project initiation process, including project assignment, defining the APE, and conducting background research, is essentially the same as the processes described in Section 2 for projects not falling under the PA. The primary difference is that documentation does not become a part of the PA Quarterly Report, and does not need to be documented using a memo.

Another difference between the PA process and the standard process at the initial stage of Section 106 review is that projects that are screened and exempted under the PA require consultation when the PA is not applicable.

## 4.2 The Section 106 Process

### 4.2.1 Identifying Consulting Parties

The HPT Staff identifies all the parties that may need to be consulted for the project. The consulting parties include SHPO, or THPO for projects on Tribal lands. If the Tribe does not have a THPO, then consultation is with both the SHPO and an appropriate Tribal representative. If the project is on lands managed by a federal agency, state agency, or LPA that is not a signatory to the PA, these agencies are also consulting parties. Additional consulting parties may include individuals or organizations with a demonstrated economic interest in the project, or interest in historic properties that might be affected by the project.

#### 4.2.1.1 4.2.1.1 Public Involvement and Section 106

Under Section 106 code of regulations 36 CFR 800.2(5)(d), agencies should seek and consider the views of the public as they are essential to informed decision making in the Section 106 process. The regulations go further to stipulate that the public involvement is coincidence with the nature and complexity of the undertaking and its effect on historic properties. For the majority of the projects, e.g., those conducted under the 326 MOU for which there is a no adverse effect to historic properties, no additional public involvement is completed besides that which is done in the normal course of NEPA compliance. For those specific projects that have an adverse effect, the Section 106 public involvement is conducted through the formalized NEPA public involvement component. If it is necessary to conduct public involvement for a project that does not include a NEPA trigger, then EP would coordinate with ADOT's public involvement department.

### 4.2.2 Identifying Historic Properties

#### 4.2.2.1 Determining if a New Survey is Required

Based on the background research and APE definition, the HPT Staff will:

- Determine if a new survey is required for the project area.
  - If the HPT Staff determines that an adequate survey has been previously conducted within the APE, and the survey did not 1) identify any cultural resources, or 2) did identify cultural resources but none of the resources were determined to be National Register eligible, then no new survey will be required. The HPT Staff will make a finding of No Historic Properties Affected and follow the consultation process in Section 4.2.2 below.
  - If HPT Staff determines that a previously unsurveyed APE does not warrant a new survey because the APE has been so disturbed that there is not potential to contain historic properties, no new survey will be required. The HPT Staff will make a finding of No Historic Properties Affected. Section 4.2.2.2 below details the consultation steps for a finding of No Historic Properties Affected. It is important that the consultation letter include a robust justification for the determination that new survey was not warranted.
- If the HPT Staff determines that an adequate survey has been previously conducted within the APE, and the survey did identify cultural resources, the HPT Staff will follow the steps below for evaluating National Register eligibility and assessing effects.

- HPT Staff determines whether the cultural resources meet the current definition of a site(s) and whether adequate information is present to identify eligibility.
- If the eligibility of the site(s) can be adequately addressed then it is necessary to determine whether the site(s) would be potentially impacted by the project. If the site boundaries are not well defined, the site may need to be revisited to determine the boundaries and whether any features may be impacted.

**Note:**

In order for the HPT Staff to determine that a previous survey was “adequate,” the previous survey must meet current professional standards pursuant to SHPO Guidance Point No. 5, available at: <http://azstateparks.com/SHPO/review.html>.

**4.2.2.2 Conducting a New Survey**

- If a new survey is required, the HPT Staff will work with the EP or PM, as appropriate, to ensure that a consultant is tasked to conduct the survey.
- If a consultant is tasked with conducting new survey; the HPT Staff checks to ensure that the consultant SOW includes conducting background or Class I research prior to fieldwork, and includes assessment of the current validity of any previous eligibility determinations or recommendations for previously recorded cultural resources.
- If a project is large and complex, and/or the project area has been investigated through multiple previous studies, and/or the area contains many previously identified cultural resources, the HPT Staff may have an on-call consultant complete a Class I study. The need for this deliverable would be indicated on the PEDS.
- If a new survey is conducted and no cultural resources are identified within the APE, whoever does the survey fills out a Survey Review Summary Form (SRSF) (SHPO Guidance Point No. 10, 2015). The HPT Staff then makes a finding of No Historic Properties Affected and follows the consultation process in Section 4.4.1 below.
- If a new survey identifies cultural resources within the APE, the HPT Staff will ensure that a survey report meeting current reporting standards (SHPO, ASM, and land manager) is prepared. If the project area is on agency or Tribal lands, then the report must also follow any reporting standards of the agency or Tribe.
  - The process for reviewing a new survey report is similar to that previously described in Sections 3.3.3.1 and 3.2.2.2
  - The HPT Staff follows the processes described below in Sections 4.3 and 4.4 for evaluating National Register eligibility and assessing effects on historic properties.

**4.3 Evaluating National Register Eligibility**

If cultural resources have been identified in the project APE, either newly recorded or previously recorded but not evaluated, the HPT Staff applies the National Register criteria to these cultural resources. Where the criteria are met, the HPT Staff determines the cultural resource as eligible for

listing in the National Register. Where the criteria are not met, the HPT Staff determines the cultural resource as not eligible. Where the National Register status is undetermined, the HPT Staff either 1) recommends additional investigations, through testing or other appropriate means, to recover the necessary information to make a determination of eligibility, or 2) decides to treat the cultural resource as if it were National Register eligible for the purposes of the project.

- When previously evaluated cultural resources are identified within a project's APE, the HPT Staff reviews the previous evaluations to assess whether they remain valid. This review may require a field visit, which may be made by a consultant on behalf of HPT. If the previous evaluations are not valid, the HPT Staff conducts a formal re-evaluation.
- If only a portion of a cultural resource is within the project APE, the evaluation effort should include the resource as a whole. If evaluating the entire resource is beyond the scope of the project, and there is insufficient information within the APE to assess the eligibility of the resource, the eligibility of the resource is described as unevaluated. If necessary, for resource management or Section 106 purposes, for a particular undertaking, an unevaluated resource may be treated as if it were eligible.
- In making National Register evaluations, the HPT Staff is encouraged to discuss recommendations with any landowners on eligibility of properties on their lands before formal consultation. Once the landowner is in agreement with ADOT's recommendation, ADOT will consult on a formal eligibility determination.
- The HPT Staff sends a copy of the survey report and the formal determination of National Register eligibility to the HPT Team Lead, along with a draft consultation letter. After the HPT Team Lead reviews and approves both the report and the draft letter, the HPT Staff prepares the final letters for mailing and the HPT Team Lead signs them and returns them to the HPT Staff for final processing and transmittal to the consulting parties.
- The SHPO typically responds within 15 calendar days with their concurrence or comments to ADOT. All other consulting parties have 35 days to respond.
- If the SHPO or THPO do not concur with the eligibility determination, ADOT will seek to resolve the disagreement. If the disagreement cannot be resolved, ADOT will seek a National Register determination from the Keeper of the National Register in accordance with 36 CFR §800.4(c)(2). The Keeper's determination will be final.

#### **4.4 Assessing Effects on Historic Properties**

Assessment of effects can follow three paths. The first is for HPT Staff to recommend a Finding of No Historic Properties Affected. The second is a Finding of No Adverse Effect. The third path is for an HPT Staff to recommend a finding of Adverse Effect. Each of these paths is discussed in more detail below.

##### **4.4.1 Finding of No Historic Properties Affected**

- If the HPT Staff determines there are no historic properties that will be affected within the project APE, the HPT Staff makes a finding of No Historic Properties Affected. The HPT Staff or consultant CRP prepares a draft consultation letter that the HPT Staff submits to the HPT Team Lead, along with any supporting documentation. After the HPT Team Lead reviews and approves the draft letter, the HPT Staff prepares the final letters for mailing and the HPT Team Lead signs them and returns them to the HPT Staff for final processing and transmittal to the consulting parties.

- The SHPO typically responds within 15 calendar days with their concurrence or comments. All other consulting parties have 35 days to respond.

#### 4.4.2 Finding of No Adverse Effect

- If the HPT Staff determines there will be no adverse effect to historic properties, the HPT Staff will make a finding of No Adverse Effect. The HPT Staff is encouraged to discuss this recommendation with any landowners, if the affected properties are on their lands, before formal consultation. The HPT Staff or a consultant drafts a letter on the finding of No Adverse Effect, and the HPT Staff submits the letter and any supporting documentation to the HPT Team Lead for review. After the HPT Team Lead reviews and approves the draft letter, the HPT Staff or a consultant prepares the final letters for mailing and the HPT Team Lead signs them and returns them to the HPT Staff for final processing and transmittal to the consulting parties.
- Often the NAE letters have avoidance areas, please ensure that the avoidance areas have been agreed to in writing by both the PM and the RE prior to sending the consultation letter. The EP should assist the HPT with getting those assurances – and those avoidance areas MUST BE included in environmental commitments for the project as well as the bid documents. Additionally, the HPT must add that project to the S106 project tracking spreadsheet.
- The SHPO typically responds within 15 calendar days with their concurrence or comments to ADOT. All other consulting parties will have 35 days to respond.

#### 4.4.3 Finding of Adverse Effect

- If the criteria of adverse effect in 36 CFR 800.5(a)(1) are met, the HPT Staff will make a finding that the project will have an adverse effect on historic properties. The HPT Staff is encouraged to discuss this recommendation with any landowners, if the affected properties are on their lands, before formal consultation. The HPT Staff or a consultant will draft a letter on the finding of Adverse Effect, and the HPT Staff will submit the letter, in addition to all appropriate supporting documentation, to the HPT Team Lead for review. After the HPT Team Lead reviews and approves the draft letter, the HPT Staff or a consultant prepares the final letters for mailing and the HPT Team Lead signs them and returns them to the HPT Staff for final processing and transmittal to the consulting parties.
- Although not required by 36 CFR 800, ADOT sends notification of the adverse effect to SHPO and the consulting parties. The SHPO typically will respond within 15 calendar days with their concurrence or comments to ADOT. All other consulting parties will have 35 days to respond. ACHP usually responds within 15 days.
- ADOT may include in the consultation letter a statement that ADOT proposes to resolve the adverse effect through a MOA or project-specific PA.

#### **Notes:**

For most projects, the HPT Team Lead will notify the ACHP of the adverse effect during the preparation of and consultation on the draft MOA or project-specific PA. This notification will include a request for the ACHP's participation in resolving the adverse effect. The HPT Staff will prepare all of the required

documentation under 36 CFR 800.11(e) to submit to the ACHP, in addition to ADOT's letter to the ACHP. HPT Team Lead will submit information to the ACHP through the e106 process. The ACHP has 15 days to notify the ADOT whether or not the ACHP will participate in the resolution of adverse effects. If no response is received from the ACHP within 15 days, it is safe to assume that the ACHP will not participate. For large, complex, and/or controversial projects; however, ADOT may notify the ACHP of the adverse effect and the proposed resolution of the adverse effect through the preparation of a MOA or project-specific PA, **prior to** preparing the agreement document. As discussed above, ADOT will request the ACHP's participation in the resolution of adverse effects through this notification.

#### **4.5 Resolving Adverse Effects**

A MOA is used for a specific project when the impacts to historic properties are known. A project-specific PA is used when a project will impact historic properties, but the nature of these impacts is not yet known, and/or when implementation of measures to resolve adverse effects will require extensive post-NEPA decision making because of issues associated with property access or the project design process (e.g., for design build projects). A project-specific PA is also used early in the project development process when ADOT anticipates a complex and controversial consultation process. In the latter case, the project-specific PA will provide the structure and framework for consultation and all steps in the Section 106 process.

The steps for developing a project-specific MOA or PA are outlined in Section 3.5.4.2.

#### **4.6 Consultation Correspondence, Forms, and Memoranda**

1. Consultation letters are prepared by the HPT Staff or consultant CRP following ADOT's letter guidelines. The HPT Staff ensures that all correspondence has the most updated project and TRACS number. The HPT Staff or consultant CRP prepares letters as a Microsoft Word document.
2. The HPT Team Lead reviews draft consultation letters and supporting documentation.
3. After the HPT Team Lead approves the draft letter, the HPT Staff or consultant CRP prepares final letters to all consulting parties.
4. The HPT Team Lead signs the consultation letters and returns them the HPT Staff for processing.
5. The HPT Staff processes and sends the letters, and files the electronic copies in the EP-Drive project folder. Unless otherwise noted in the consultation protocols in the HPT Portal, consultation letters are transmitted electronically.
6. The HPT Staff notes the date the consultation letters were sent, to whom they were sent, and the subject of consultation in the PTS, as well as the date the consultation period is over.
7. When concurrence and response letters are received from SHPO or other consulting parties, the HPT Staff transmits PDFs of the concurrence or response letter (and, if necessary, the original outgoing letter) via email to the consultant, the project Environmental Planner, and other appropriate staff within ADOT. The letters are also uploaded to the ENV-Drive project folder, and receipt of the letter is noted in the PTS. Any original signed concurrence letters are scanned into an electronic version and added to the EP drive. Either in real time or at the conclusion of Section 106, the consultant CRP or the HPT Staff uploads the letters to the HPT Portal.
8. The HPT Staff completes the HPT Consultation Close-Out Memorandum after obtaining concurrence on the conclusion of the Section 106 consultation, and sends the Close-out Memorandum to the Environmental Planner, and transmits a copy to the on-call consultant, if

an on-call consultant is participating in the project. The templates for Close-Out memoranda are on the HPT server.

9. If an on-call consultant is participating in the project, the HPT Staff includes in the Close-Out Memorandum a request that the consultant enter any survey, cultural resource, or consultation information into the HPT Portal within two weeks. The HPT Staff places a tickler/reminder on their calendar to follow-up as necessary.

### 5.1 SECTION 4(f) BASICS

Section 4(f) was originally part of the Department of Transportation Act of 1966, and is currently found in 49 USC 303 and 23 USC 138. Though the language in Section 4(f) of the Department of Transportation Act of 1966 now resides in Section 303 of Title 49 and Section 138 of Title 23, it is still referred to as “Section 4(f).”

Section 4(f) specifies that an agency of the federal Department of Transportation, such as FHWA, cannot approve the use of land from a property protected under Section 4(f) for a transportation project, unless:

- There is no feasible and prudent avoidance alternative to the use of land from the property; and
- The action includes all possible planning to minimize harm to the property resulting from such use; or
- The use, including any measures to minimize harm (such as any avoidance, minimization, mitigation or enhancement measures), will have a *de minimis* impact on the property.

A *de minimis* impact is a negligible use of a property. That is, the impact does not adversely affect the features, attributes, or activities that qualify a property for protection under Section 4(f).

The types of properties that warrant protection under Section 4(f) include:

- Publicly owned parks, recreational areas, wildlife and waterfowl refuges; and
- Publicly and privately-owned historic sites.

“Historic sites” are properties that are listed in or eligible for listing in the National Register of Historic Places (i.e., “historic properties” as defined in the Section 106 regulation). These include National Historic Landmarks and also properties of religious and cultural significance (traditional cultural properties –TCPs) that are listed in or eligible for listing in the National Register.

In order for a project to use lands from a historic site, or other type of Section 4(f) property, ADOT must follow the options outlined in the 4(f) manual. One option is through a *de minimis* impact determination. The other two options are through the use of a programmatic Section 4(f) evaluation, or an individual Section 4(f) evaluation. A *de minimis* impact determination is the simplest Section 4(f) approval option, and does not require an analysis of avoidance alternatives. Avoidance alternatives are a requirement for the other two approval options. Definitions of these three approval options, along with definitions of the three kinds of Section 4(f) “use” (permanent, temporary, or constructive), and “feasible and prudent avoidance alternatives” are provided in FHWA’s Section 4(f) regulation ([23 CFR 774](#)) and FHWA’s [Section 4\(f\) Policy Paper](#). These documents also provide a definition of “all possible planning to minimize harm.” Additional information on the Section 4(f) process is available through FHWA’s [Section 4\(f\) tutorial](#).

ADOT has developed a [Section 4\(f\) Manual](#) to outline the process and how it is implemented on ADOT and LPA projects. This is an internal procedure manual that is available to ADOT Staff and consultants. The Section 4(f) manual includes a set of forms and instructions for ENV Staff to document Section 4(f) decisions using the forms.



The basic steps in the Section 4(f) process are as outlined below. The Section 4(f) manual should be consulted for more detailed guidance. The steps below assume that the project is a federal DOT undertaking, and are specific to Section 4(f) properties that are historic sites (although many are relevant for other types of Section 4(f) properties as well):

- Identify the Section 4(f) properties (e.g., historic sites).
- Determine if the project will result in an impact to any Section 4(f) properties.
- If a protected property is impacted, determine if the property falls under the exceptions to the requirement for a Section 4(f) approval. These exceptions are listed in 23 CFR 774.13, and are described in the ADOT Section 4(f) Manual and below in this document.
- If the protected property does not fall under one of these exceptions, determine if there is a use with *de minimis* impact.
- If the use is *de minimis*, prepare a *de minimis* impact determination/approval option as described below.
- If the use is greater than *de minimis*, determine the appropriate approval option: either a programmatic evaluation or an individual evaluation.

#### 5.1.1 Section 4(f) Exceptions:

As noted above, FHWA's Section 4(f) regulations include a list of exceptions to the requirement for a Section 4(f) approval. These include, but are not limited to:

- Maintenance, preservation, rehabilitation, operation, modernization, reconstruction or replacement of historic transportation facilities that are on or eligible for the National Register. This exception applies when it has been determined through the Section 106 process that a proposed project will not adversely affect the qualities of the facility that cause it to be listed or eligible for inclusion in the National Register. The Section 4(f) regulations require that the official with jurisdiction (OWJ) over the facility does not object to the Section 106 determination that the facility will not adversely affected by the undertaking. For historic sites, the OWJ is usually the SHPO, or the THPO if the property is on tribal lands.
- National Register archaeological sites that are important chiefly because of what can be learned by data recovery and have minimal value for preservation in place. The OWJ must be consulted and not object to this finding. Consultation with the OWJ regarding the determination that as site has minimal value for preservation in place should be included in the Section 106 letter that includes the finding of effect to the property in question and the proposed treatment. Archaeological Exceptions are for Adverse Effect Findings.
- The language to be included in the SHPO/THPO letter includes:

*"By federal law, transportation projects involving federal actions and / or funding require assessment in accordance with Section 4(f) of the Department of Transportation Act and its implementing regulations at 23 CFR Part 774. In compliance with this statute, ADOT is obligated to assess archaeological sites. In doing so, ADOT has found that regarding Section 4(f) Site(s) X derives its primary statutory importance from data potential, the nature and extent of which do not warrant preservation in place. If your office has no objection to this finding, ADOT will determine, in accordance*

*with 23 CFR § 774.13, that site(s) X meets the archaeological exception from Section 4(f) consideration. As part of the ongoing Section 106 consultation process, ADOT has sought, and continues to seek information from the OWJ, Section 106 Consulting Parties, Tribes, and the public, as necessary, regarding this/these and other affected cultural resources.”*

The above language is included only in the letter to the OWJ. If no objection is received, the HPT Staff documents the decision to the file.

- For projects which are in the claimant area of the Four Southern Tribes and for which a Section 4(f) use has been determined, include a copy of the SHPO letter with consultation to all four of the Four Southern Tribes.

#### 5.1.2 De Minimis Impact Determination

If the use of a historic site is *de minimis*, as described above, the HPT Staff must inform the OWJ of the intent to make a *de minimis* impact determination. This is done by adding language to the Section 106 effect letter to SHPO or THPO that informs the OWJ that the OWJ’s concurrence with the Section 106 determination that the undertaking would not adversely affect the property in question will be used by ADOT to make a *de minimis* impact determination under Section 4(f). A Section 4(f) use with *de minimis* impact is not applicable to impacts within existing ROW but typically applied only for acquisitions of minor amounts of ROW from a historic property. A sample letter with appropriate *de minimis* language is on the internal ENV-Drive. [Z:\ENV\9152\H\_P\_T\Templates], see Appendix A7.

For projects where the Four Southern Tribes will be receiving a copy of the documentation, please use the following wording:

- At this time, in consideration of its determination of “no adverse effect,” ADOT is informing SHPO of its intention to make a *de minimis* impact finding in accordance with Section 4(f) of the United States Department of Transportation Act with regard to Site XXX. The *de minimis* determination is not in any way a description of the value or significance of the Site X, but instead a statutory term of art that signifies the application of a Section 4(f) use based upon the Section 106 consultation concurrence.

## 5.2 Section 4(f) and Section 106

As discussed above, the parts of 23 CFR 774 that are of particular importance in terms of the linkages between Section 4(f) and Section 106 include:

- 23 CFR 774.13 (a), on the restoration, rehabilitation or maintenance of National Register facilities, like historic roads and bridges; and
- 23 CFR 774.13 (b), on the impact to National Register archaeological sites.

Parts of FHWA's Section 4(f) Policy Paper that are also relevant in terms of the linkages between Section 4(f) and Section 106 include:

- Questions 2A through 3C (on historic sites, historic districts, boundaries, National Historic Landmarks, and archaeological sites)
- Question 6 (on TCPs)
- Question 7B (on the relationship between a Section 4(f) "use" and an adverse effect finding under Section 106)
- Question 7C (determining if there is a Section 4(f) use of a National Register historic district)
- Question 7D (consideration of historic sites within highway rights-of-way)
- Question 8 (historic bridges, highways and other transportation facilities)
- Question 12 (on *de minimis* impacts on historic sites)
- Question 28 (on tunneling under or bridging over historic sites)

### **5.3 SECTION 4(f) AND THE NEPA REVIEW PROCESS**

Section 4(f) documentation and processing requirements vary depending on the type of Section 4(f) property impacted and whether or not there is a use and what type of approval option is employed. All situations that involve a use of a Section 4(f) property, however, will necessitate some degree of documentation, either analysis in the body of a NEPA document or in a separate Section 4(f) evaluation.

The HPT Team Lead is responsible for determining whether or not a project involves the potential use of a historic site protected under Section 4(f), and for defining the nature of this use, based on an assessment of effects following the steps laid out in Sections 3.0 or 4.0 of this Section 106 PA Manual. The ADOT Environmental Planner must be informed of any Section 4(f) property within or in the vicinity of a project, as the presence of a Section 4(f) property might impact the consideration of project alternatives, the design of any build alternative, and a project's schedule and budget. The goal is to avoid, if possible, an adverse effect on a historic site that is protected by Section 4(f). By definition, an adverse effect under Section 106 is not a *de minimis* impact (see Question 12A of the FHWA Section 4(f) Policy Paper). When there is an adverse effect on a historic site (not an archaeological site), the two available approval options are a programmatic Section 4(f) evaluation or an individual Section 4(f) evaluation. Both of these approval options require an analysis of avoidance alternatives, which can add time and cost to the project development process. As noted above, an analysis of avoidance alternatives is not required when making a *de minimis* impact finding, which, when applicable, is the simplest Section 4(f) approval option.

#### **5.4 PA MANUAL UPDATES:**

As this is a guidance document for procedures related to the day-to-day activities associated with the cultural resources review for the ADOT Historic Preservation Team, there will be updates as new, more efficient ways of doing tasks are identified or in changes of local or state ordinances. Instead of reissuing the document each time minor corrections are added, the reader is encouraged to review the attached table.

#### **Description of Modifications**

Version	Change	Date	By
1a	Section 4(f) clarification on de minimis impact Section 5.1.2	1/20/22	KP
1b	Preservation in place language updated pg. 53	2/02/23	DR

## **Appendix A - PROJECT DOCUMENTATION**

Included in this Appendix are examples of project letters or memos that are called out in the text.

- A1 – No Potential to Effect Memo
- A2 – Attachment 4 of the PA – Defining the APE
- A3 - Example No Adverse Effect Consultation letter with a report
- A4 - Example of a PA Quarterly Batch Report (minus the supporting documentation)
- A5 – Example of a Close Out Memo
- A6 - Example of a Tribal Consultation Letter
- A7 – Example of a Section 4(f) *de minimis* Consultation Letter

**Project Documentation - Appendix A1:**

**Example of a No Potential Memo**

## MEMORANDUM

TO: Sarah Karasz, Environmental Planning

FROM: Kris Powell, Historic Preservation Team

DATE: August 24, 2020

RE: Project Number: Pending

TRACS Number: 10 MA 127 F0324 01X

Project Name: Bullard Avenue to I-17 upgrade,

Finding: Stipulation X.B.1. No Potential to Affect Historic Properties

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The Arizona Department of Transportation is proposing to upgrade ramp meters with new hardware along I-10 at the Bullard Avenue exit within Maricopa County.

The project is funded by the Federal-aid Highway Program, and is thus subject to Section 106 review. The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by ADOT pursuant to 23 U.S.C. 326 and a Memorandum of Understanding dated January 3, 2018, and executed by the Federal Highway Administration and ADOT.

The project would consist of the procurement of new hardware for ramp metering to make it possible to deploy adaptive ramp metering. The new equipment would be installed in existing ramp meter boxes. No ground disturbance activities would occur as part of this project. There would be no visual, auditory, or atmospheric effects from the project activities.

Therefore, per Stipulation X.B.1. of the *Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act Regarding Implementation of Federal- Aid Transportation Projects in the State of Arizona* executed December 16, 2015, ADOT finds that the proposed work has no potential to affect historic properties.

If you have any questions or need additional information, please contact me at 602-712-2343 or [kpowell@azdot.gov](mailto:kpowell@azdot.gov)

**Project Documentation - Appendix A2:**

**Attachment 4 of the PA**



## **Programmatic Agreement for Federal-Aid Transportation Projects in Arizona**

### **Attachment 4: Defining the Area of Potential Effects (APE)**

In accordance with the Stipulation VIII.D.1 of this Agreement, Arizona Department of Transportation (ADOT) will establish the Area of Potential Effects (APE) for Program-funded undertakings. When the guidelines below are followed, specific consultation with the State Historic Preservation Officer (SHPO), and any other consulting parties, to define the APE will not be necessary, although ADOT may consult with SHPO when needed for particularly large or complex undertakings, when the undertaking may be controversial in nature, or for other circumstances. However, when a Program-funded undertaking is on Tribal, federal or state land, ADOT will consult or coordinate with the appropriate Signatory Tribe or agency in accordance with Stipulations V or VI, as applicable, in determining the APE. The ADOT Historic Preservation Team (ADOT HPT) and ADOT Project Manager are jointly responsible for defining the APE or redefining the APE.

#### **Defining the APE**

- A. Defining the APE depends on an undertaking's potential to affect historic properties. Effects to be considered may include, but are not limited to, physical damage or destruction of all or part of a property; physical alterations; moving or realigning a historic property; isolating a property from its setting; visual, audible, or atmospheric intrusions; shadow effects; vibrations; and change in access or use.
- B. An APE delineates the boundaries within which it can be reasonably expected that a proposed undertaking has the potential to affect historic properties, should any be present. It may be the right-of-way itself or an area either larger or smaller than the right-of-way, depending on the scope and design of the undertaking.
- C. In defining the APE, ADOT will address direct, indirect, reasonably foreseeable, and cumulative effects, when warranted. Indirect effects may extend beyond the right-of-way to encompass visual, audible, or atmospheric intrusions; vibrations from construction activities; reasonably foreseeable economic impacts that may adversely affect historic properties; or change in access or use. ADOT will carefully consider defining an indirect APE, particularly for potential audible and visual effects, taking into account proximity and use of adjoining properties, the surrounding topography, and other aspects of a property's setting
- D. For archaeological properties, an APE is typically established based on an undertaking's potential for direct effects from ground-disturbing activities. On occasion, archaeological sites may also have qualities that could be affected indirectly. Buildings, structures, objects, districts, and sites including traditional cultural properties (TCPs) are more likely

to be subject to indirect, as well as direct effects. ADOT will consider these factors in defining the appropriate APE for the undertaking.

- E. In defining the APE, ADOT will consider the undertaking's potential effects on a historic property as a whole, including the reasonably anticipated or known boundaries of archaeological sites.

**Project Documentation - Appendix A3:**

**Example of a No Adverse Effect Letter**

2019-0158 (146833)

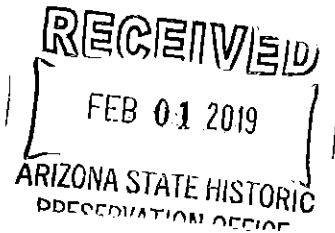
**ADOT**

Environmental Planning

An Arizona Management System Agency

Douglas A. Ducey, Governor

John S. Hallkowskl, Director



February 1, 2019

In Reply Refer To:

NHPP179-A(203)T  
TRACS No. 179 YV 298.9 F0167 01D  
I-17 – Red Rock Vista / Pavement  
Initial Section 106 Consultation  
"no adverse effect"

Dr. David Jacobs, Compliance Specialist  
State Historic Preservation Office  
1100 West Washington Street  
Phoenix, Arizona 85007

Dear Dr. Jacobs:

The Arizona Department of Transportation (ADOT) is planning a pavement rehabilitation and roadway safety project just south of the Village of Oak Creek, Arizona, in Yavapai County (see Figures 1 and 2). The project area is located in Sections 8, 17, and 18 of Township 15 North, Range 6 East (Gila and Salt River Baseline and Meridian [GSRBM]), Sections 1, 12, and 13 of Township 15 North, Range 5 East (GSRBM), and Sections 24, 25, 35, and 36 of Township 16 North, Range 5 East (GSRBM). This area is depicted on the Casner Butte, Lake Montezuma, and Sedona quadrangles of U.S. Geological Survey topographic maps (7.5-minute series). Because this project would employ federal funds, it is considered an undertaking subject to Section 106 review. The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by ADOT pursuant to 23 U.S.C. 326 and a Memorandum of Understanding dated January 3, 2018, and executed by the Federal Highway Administration and ADOT.

The proposed project would occur on Coconino National Forest (CNF) land. Consulting parties for this project are CNF, ADOT, Arizona State Historic Preservation Office (SHPO), Arizona State Museum (ASM), Ak-Chin Indian Community, Gila River Indian Community, Navajo Nation, Salt River Pima-Maricopa Indian Community (Four Southern Tribes lead), Tohono O'odham Nation, Tonto Apache Tribe, White Mountain Apache Tribe, Yavapai-Apache Nation, and Yavapai-Prescott Indian Tribe.

The scope of this project would involve:

- Pavement mill and overlay
- Replacement of rubberized wearing course
- Shoulder build-up (fill) and fog coat
- Installation of new pavement marking, including striping and raised pavement markers
- Installation of rumble strips
- Replacement of existing signage and/or installation of new signage
- Installation of two new traffic loop detectors at MP 301 and MP 304

- Installation of graded ditch near MP 303.27
- Installation of pipe culvert under the existing roadway at MP 303.27
- Vegetation removal/trimming within clear zone/recovery zone throughout project area
- Removal of trees and brush under the bridge at the Dry Beaver Creek bridge
- Pavement of U.S. Forest Service road intersections
- Replacement of existing guardrails
- Installation of additional guardrails
- Embedded construction advanced warning signage in Segments 2 – 5 (see Table 1, below)

The area of potential effects (APE) includes five variable-width segments of Interstate 17 (I-17), SR 179, and Yavapai County Road 78 (see Table 1). Segment 1, which includes the pavement rehabilitation, would occur along State Route (SR) 179, between milepost (MP) 299 and MP 305. Ground disturbance in Segments 2 through 5 would involve the temporary placement of embedded signs, warning drivers of work ahead. No new easement is anticipated.

**Table 1. Area of potential effects**

Segment	Road <sup>a</sup>	Start	End	Length	Nature
1	SR 179	MP 299	MP 305	6 mi	Pavement rehabilitation
2	SR 179	MP 305	MP 306	1 mi	Advance warning signs
3	I-17 (NB)	MP 298	MP 299	1 mi	Advance warning signs
4	I-17 (SB)	MP 299	MP 300	1 mi	Advance warning signs
5	YC 78	SR 179	MP 1	1 mi	Advance warning signs

<sup>a</sup> NB = northbound, SB = southbound, YC = Yavapai County Road

The entirety of the current project's area of potential effects (APE) has been surveyed for cultural resources.

Segment 1 of the APE was recently surveyed in conjunction with this project. The results of this survey are reported in *A Class III Cultural Resources Survey of 145.5 Acres along State Route 179, Between Mileposts 298.87 and 305.00, South of the Village of Oak Creek, Yavapai County, Arizona* (Ferland and Stewart 2018), which is enclosed for your review and comment.

Segment 2 of the APE was surveyed previously, in connection with an earlier and unrelated project. The results of this survey are reported in *A Cultural Resource Survey Report for SR 179 Improvements in the Vicinity of Sedona, Coconino and Yavapai Counties, Arizona* (Fenicle and Lundin 2006), and SHPO subsequently concurred with the adequacy of this report (Dongoske [ADOT] to Jacobs [SHPO], September 6, 2006; SHPO concurrence, September 19, 2006).

Segment 3 of the APE was surveyed previously, in connection with an earlier and unrelated project. The results of this survey are reported in *A Cultural Resource Survey of Interstate 17 from the Middle Verde Interchange to the Sedona Interchange, Beaver Creek Ranger District, Yavapai County, Arizona* (Gentilli and Folb 2000). CNF and SHPO concurred with the adequacy of this report (CNF Inventory Standards and Accounting Form [IS&A], February 23, 2001).

Segment 4 of the APE was surveyed previously, in connection with an earlier and unrelated project. The results of this survey are reported in *An Archaeological Survey of 12 Miles of Interstate 17, Southbound Lane Right-of-Way between Mileposts 299 and 311.2, from the Sedona-I-17 Interchange to the Yavapai/Coconino County Line, Yavapai County, Arizona* (Spalding and Lefthand 1995). CNF and SHPO concurred with the adequacy of this report (CNF IS&A), February 28, 1996).

Segment 5 of the APE was surveyed previously, in connection with an earlier and unrelated project. The results of this survey are reported in *A Cultural Resources Survey for Proposed Improvements along Beaverhead Flat Road (Coconino National Forest Road No. 120), Yavapai County, Arizona* (Wright 1999a) and *Addendum to A Cultural Resources Survey for Proposed Improvements along Beaverhead Flat Road (Coconino National Forest Road No. 120), Yavapai County, Arizona* (Wright 1999b). Concurrence with report adequacy cannot, at present, be documented.

Additionally, Fraserdesign inventoried historic bridges and culverts along I-17 and SR 179, as reported in *Vehicular Bridges in Arizona 1880–1964* (Fraser 2008). SHPO previously concurred with the adequacy of the report and eligibility determinations (Clementino [ADOT] to Collins [SHPO] January 12, 2012; SHPO concurrence February 28, 2012). Within the current APE, six culverts and one bridge were assessed. These are addressed in more detail below.

In total, 17 cultural resources are present within the project area. This includes four archaeological sites, two historical trails, two overpasses, one bridge, seven culverts, and one highway.

Site AR-03-04-06-1124 is a multi-component artifact scatter with possible agricultural features. Following extensive test excavation associated with an earlier, unrelated project, the site was determined by the CNF to be not eligible for the National Register of Historic Places (NRHP) (CNF 1995-121-P; CNF 2003-82-E).

Site AR-03-04-01-1010, also known as AZ O:5:111(ASM), is a prehistoric artifact scatter that required testing to determine its NRHP eligibility (CNF IS&A, November 12, 1997). Recent survey was unable to relocate AR-03-04-01-1010 where originally mapped (Ferland and Stewart 2018). Based on their assessment, ADOT has determined that AR-03-04-01-1010 was misplatted and that the site is not located within the ADOT easement or APE.

Structure AR-03-04-01-0240 is the historic General George Crook Trail alignment, dating to the middle and late nineteenth century. The historic use of this trail may have followed earlier, indigenous trails. In connection with other projects, this structure has been determined eligible for NRHP inclusion under Criteria A, B, and D. At this time, documentation of SHPO concurrence *vis-à-vis* eligibility has not been located. However, Ferland and Stewart (2018) were recently unable to locate evidence of the trail within the current APE. Based on this, ADOT has determined that because of the lack of integrity of the trail within the APE, this segment is non-contributing to the property's overall NRHP eligibility.

Site AR-03-04-01-1009 is identified as a prehistoric artifact scatter with four accompanying thermal features dating to approximately AD 1050 – 1300. The site has also been recorded as AR-03-04-01-22, AZ O5:108(ASM), AZ O:5:146(ASM), and AZ O:5:147(ASM) during the course of previous investigations, with overlapping but incongruous site boundaries. For the purpose of this project, ADOT is considering all site boundaries in combination. The site was previously determined eligible for inclusion in the NRHP under Criterion D (CNF IS&A, November 12, 1997). Proposed work within site AR-03-04-01-1009 would include guardrail replacement and the installation of one turnout and one drainage ditch. The ADOT Project Manager and District Engineer have committed to avoiding new ground disturbance within the southern half of AR-03-04-01-1009. This would be accomplished by having a qualified archaeologist flag an area of avoidance within the ADOT easement, including a 50-ft buffer along the site's southern edge (i.e., SR 179, stations 200 to 211), and restrict all travel and construction therein to the disturbed roadway prism. All construction activities intersecting with the northern half of AR-03-04-01-1009 would be monitored by a qualified archaeologist, in accordance with an approved monitoring and discovery plan and ASM permit. In the event that unanticipated cultural resources were encountered during construction, ground disturbing activities within 100 ft of the discovery would halt until such time as archaeological personnel could assess the evidence and, in conjunction with appropriate authorities, authorize commencement. If human remains were encountered, all work within 100 ft of the discovery would halt and ASM would coordinate tribal consultation and repatriation efforts in consultation with ASM and SHPO.

Site AR-03-04-01-2322 is a prehistoric artifact scatter dating approximately to A.D. 700 – 1425. Recent surface observations include approximately 100 lithic artifacts, six pottery sherds, and four groundstone fragments. Many of these appear to have been exposed through erosion, suggesting to Ferland and Stewart (2018) the potential for subsurface deposits. Based on their recommendation, ADOT has determined that the site is eligible for the NRHP under Criterion D for its potential to add to our understanding of local prehistory. To avoid impacting this resource, The ADOT Project Manager and District Engineer have committed to avoiding the site. A qualified archaeologist will flag the site's boundary within the ADOT easement, including a 50-ft. buffer at both the northern and southern edges. No work would take place within this area, either on or off the roadway (SR 179, stations 244 + 00.00 to 249 + 50.00).

Structure AR-03-04-01-0742 is the historic Stoneman Grade Stage Trail, previously described as approximately 9 ft wide and lined with boulders and low berms. Ferland and Stewart (2018) were recently unable to relocate the trail within the APE and argue that it has been thoroughly obliterated within the SR 179 corridor. While the structure has not been assessed for NRHP eligibility, ADOT has determined, based on the above, that the portion of the structure within the current APE would be non-contributing.

Two overpasses, one bridge, and seven culverts are over 50 years in age and located within the current APE (see Table 2). All have been previously determined not eligible for the NRHP.

**Table 2.** Historic bridges, overpasses, and culverts within the APE

Structure	Route	Built	Eligibility	Reference	Concurrence
Sedona Rd. Overpass 00633	I-17	1961	Not eligible	Fraser 2008	Clementino (ADOT) to Collins (SHPO) January 12, 2012; SHPO concurrence February 28, 2012
Sedona Rd. Overpass 01061					
Culvert 05759					
Culvert 05758					
Culvert 05061	SR 179	1962	Not eligible	Fraser 2008	Clementino (ADOT) to Collins (SHPO) January 12, 2012; SHPO concurrence February 28, 2012
Culvert 05062					
Culvert 05063					
Culvert 05064					
Culvert 05065					
Dry Beaver Cr. Br. (00736)					

Finally, SR 179 itself is recognized as part of the Historic State Highway System per the *Interim Procedures for the Treatment of Historic Roads* agreement among the Federal Highway Administration, ADOT, and SHPO (November 15, 2002) and is therefore eligible for the NRHP under Criterion D. However, the proposed project would not adversely affect the historic integrity of the road.

Table 3, below, provides an overview of the cultural resources described above. In sum, only two historic properties are positioned so as to be potentially affected by the proposed scope of work: AR-03-04-01-2322 and AR-03-04-01-1009. The former would be avoided entirely in conjunction with flagging by a qualified archaeologist. Potential impacts to the latter would be mitigated through a combination of avoidance (southern half) and archaeological monitoring (northern half). For these reasons, ADOT has determined that a finding of “no adverse effect” is appropriate for the proposed project.

**Table 3.** Summary of cultural resources discussed above (excepting those in Table 2)

Site No. <sup>a</sup>	Eligibility	Consultation	Treatment
06-1124	Not eligible	CNF 1995-121-P; CNF 2003-82-E	None
01-1010	Unevaluated	CNF IS&A, 11/12/1997	None <sup>b</sup>
01-0240	Eligible	Unable to locate	None <sup>c</sup>
01-1009	Eligible	CNF IS&A, 11/12/1997	Avoidance, monitoring
01-2322	Rec'd eligible	Pending	Avoidance
01-0742	Unevaluated	n/a	None <sup>c</sup>

<sup>a</sup> U.S. Forest Service site numbers, preceded by “AR-03-04-”

<sup>b</sup> Site determined to be outside of easement and APE

<sup>c</sup> Any portion of the structure within the APE has been completely demolished and is thus non-contributing

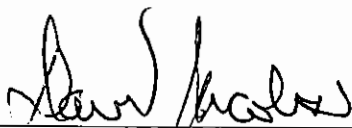



Please review the enclosed survey report and the information provided in this letter. If you find the report adequate, agree with ADOT's determination of eligibility for site AR-03-04-01-2322, and agree with the ADOT finding of project effect, please indicate your concurrence by signing on the line provided. If you have any questions or concerns, please contact ADOT Historic Preservation Specialist Will Russell at 602-712-8633 or via email at [WRussell@azdot.gov](mailto:WRussell@azdot.gov).

Sincerely,



Kris Powell, MA, RPA  
Cultural Resources Program Manager

  
\_\_\_\_\_  
Signature for SHPO Concurrence  
NHPP-179-A(203)T  
\_\_\_\_\_  
Date

Enclosure

**Project Documentation - Appendix A4:**

**Example of a PA Batch Report**

Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act Regarding Implementation of Federal-Aid Transportation Projects in the State of Arizona								
Quarterly Report of Actions from January 1, 2020 - March 31, 2020								
Federal Aid Number	ADOT Project Number	Project Name	Land Jurisdiction	Finding	New Survey Acreage	Documentation	Date	ADOT HPT
NHPP-260-C(213)T	260 NA 341.7 F0201 01C	SR 260; US 60 – Knottingham Lane	ADOT, city of Show Low	NHPA	N/A	X.C.1 <sup>*</sup> Memo (Geotechnical Investigations), email	2/5/2020	Maggie Bowler
STBG-89A-B(222)T	89A CN 375 F0154 01C	SR 89A; MP 375.1 & MP 389.2 - Rockfall Mitigation	ADOT, CNF, private	No Adverse Effect	N/A	XI.A.4 Scope change with new APE and same finding of effect, email	1/23/2020	Maggie Bowler
STBG-82-A(207)T	082 SC 038 F0202 01C	SR 82; Milepost 38 - Upper Elgin Road, Sonoita	ADOT, BLM, ASLD	Screened Undertaking Exempt from Further Review	N/A	X.C.1 and Attachment 3, map, and email	2/11/2020	Maggie Bowler
STBG-A89A-B(221)T	89A CN 382 F0047 01C	SR 89A, Sedona City Limits - Bear Howard Drive	CNF, ADOT,	NHPA	N/A	Scope Change XI.A.1, email	2/26/2020	Kris Powell
077-B(213)T	077 NA 358 F0253 01C	Taylor-Rodeo-Rodeo Drive	ADOT	NHPA	N/A	scope change XI.A.3, email	3/4/2020	Matt Mallery
HSIP KNG-0(210)T	0000 MO KNG T0191 01C	Stockton Hill Road Safety Improvement Corridor	City of Kingman	NHPA	N/A	X.C.1 attachment 3	3/5/2020	Matt Mallery
STP-087-B(224)T	087 GI 224 F0241 01C	SR 87 MP 224 – Slate Creek/Slope	USFS	NHPA	N/A	XI.A.1 Scope Change, email	3/11/2020	Danny Rucker
NHPP B19-A(203)T	B19 SC 04.6 F0244 01C	Potrero Canyon Bridge #325 and Country Club Bridges #1300 & #1301 Scour Retrofit	ADOT	NHPA	N/A	XI.A.1. Scope change with no change to the APE or project finding of effect, email	3/19/2020	Danny Rucker
STBG-89A-B(222)T	89A CN 375 F0154 01C	SR 89A; MP 375.1 & MP 389.2 - Rockfall Mitigation	Sedona,ADOT, CNF, private	No Adverse Effect	N/A	XI.A.4 Scope change with new APE and same finding of effect (scope change #2), email	2/6/2020	Maggie Bowler
CSG-0(209)T	0000 PN CSG T0180 01C	Pearl Rd; Jimmie Kerr Blvd – Avienda Ellena	Casa Grande, Pinal County, APS	NHPA	N/A	Stipulation XI.A.3. Scope change with modification of the APE, email and map	2/25/2020	Danny Rucker
040-B(229)T	040 CO 123 F0161 01D	E Seligman TI OP, EB #1259 EB/WB	ADOT	Screened Undertaking Exempt from Further Review	N/A	XI.A.1. Scope change with no change to the APE or project finding of effect, email	3/20/2020	Danny Rucker
095-D(218)T	95 MO 248 F0209 01D	SR 95; 7th Street to Aviation Drive	ADOT, ASLD	Screened Undertaking Exempt from Further Review	N/A	X.C.1. Attachment 3, email	1/14/2020	Matt Mallery
888-1(222)T	10 MA 145 H8783 01D	3rd avenue; 3rd Street, and 16th	ADOT, PHX	NHPA	N/A	X.F.1a, map, email	2/5/2020	Kris Powell

Note:<sup>\*</sup> Section references have change with the updated PA

**Project Documentation - Appendix A5:**

**Example of a Closeout Memo**

## MEMORANDUM – Cultural Closeout

TO: Katie Rodriguez, Environmental Planning  
CC: Anahita Behrad, WSP  
FROM: Jill Heilman, Historic Preservation Team  
DATE: September 9, 2019  
RE: Project Number: 010-C(220)T  
TRACS Number: 010 MA 161 F0072 01D  
Project Name: I-10, I-17 to SR 202L (Santan)  
Finding: "Adverse effect"

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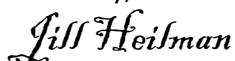
The Arizona Department of Transportation (ADOT) initiated consultation with the Arizona State Historic Preservation Office (SHPO), the Bureau of Reclamation (Reclamation), the City of Chandler (Chandler), the City of Phoenix (COP), the City of Tempe (Tempe), the Salt River Project (SRP), the Town of Guadalupe, the Ak-Chin Indian Community, the Gila River Indian Community, the Hopi Tribe (Hopi), the Pascua Yaqui Tribe, the Salt River Pima-Maricopa Indian Community, the Tohono O'odham Nation (TON), the Tonto Apache Tribe, the White Mountain Apache Tribe (WMAT), and the Yavapai-Apache Nation on a finding of "adverse effect" and on the use of Attachment 6 of the *Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act Regarding Implementation of Federal-Aid Transportation Projects in the State of Arizona* on August 1, 2019 and with the Advisory Council on Historic Preservation on August 2, 2019.

Concurrences were received from Chandler (8-13-19), COP Historic Preservation Office 8-30-19, COP Archaeology Office (8-15-19), Hopi (8-12-19), Reclamation (8-1-19), SHPO (8-9-19), and Tempe (8-30-19). WMAT declined to participate (8-2-19). TON responded that the no build option should be chosen and commented on the potential for destruction or damage to previously recorded archaeological sites and for visual impacts to the TCP (8-20-19). Finally, SRP responded with concurrence to the finding of effect and use of attachment 6, feels that the 48<sup>th</sup> St. Drain is not eligible for the National Register of Historic Places, and does not concur on the adequacy of the report (9-4-19).

At this time, ADOT has determined that this project may proceed with a finding of "adverse effect." If the remaining parties opt to participate in cultural resource consultation for this project at a later date, ADOT will make a good faith effort to address any concerns they may have. However, such consultation will not necessitate a reconsideration of this finding of project effect.

If you have any questions about this clearance, please feel free to contact me at (602) 712-6371 or by e-mail at [jheilman@azdot.gov](mailto:jheilman@azdot.gov).

Sincerely,



Historic Preservation Specialist

**Project Documentation - Appendix A6:**

**Example of a Tribal Consultation Letter**



Environmental Planning

Our True North: *Safely Home*

Douglas A. Ducey, Governor

John S. Halikowski, Director

Dallas Hammit, State Engineer

May 21, 2020

In Reply Refer To:

STP-087-B(224)T

TRACS No. 087 GI 224 F0241 01C

SR 87 MP 224 – Slate Creek/Slope

Initial Section 106 Consultation

“No adverse effect”

Mr. Stephen Roe Lewis, Governor  
Gila River Indian Community  
P.O. Box 97  
Sacaton, Arizona 85147

Dear Governor Lewis:

The Arizona Department of Transportation (ADOT) is planning a slope stabilization project along State Route (SR) 87 north of Sun Flower between mileposts (MP) 224 and 226 in Gila and Maricopa Counties, Arizona. A stockpiling area will be used along Sycamore Creek Road near MP 222.64, and Forest Road 266 would be used as a turnaround for project equipment near MP 229.5. Embedded traffic control signage would extend from MP 222.5 to MP 224.6. The project would occur on ADOT easement across land managed by the Tonto National Forest (TNF); the stockpiling area is on land solely managed by TNF. The project is located in Sections 12, 16, 20, 21, 29, and 30 of Township 7 North, Range 9 East of the Gila and Salt River Baseline and Meridian as depicted on the Reno Pass 7.5-minute U.S. Geological Survey topographic quadrangle. An overview map is enclosed for your review (Enclosure 1).

Consulting parties for the project are ADOT, the Ak-Chin Indian Community, Arizona Public Service (APS), the Gila River Indian Community, the Hopi Tribe, the Navajo Nation, the Pueblo of Zuni, the Salt River Pima-Maricopa Indian Community (lead for the Four Southern Tribes), the State Historic Preservation Office (SHPO), TNF, the Tohono O'odham Nation, the Tonto Apache Tribe, the White Mountain Apache Tribe, the Yavapai-Apache Nation, and the Yavapai-Prescott Indian Tribe.

Because this project would employ federal funds, it is considered an undertaking subject to Section 106 review. The environmental review, consultation, and other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by ADOT pursuant to 23 U.S.C. 326 and a Memorandum of Understanding dated January 3, 2018, and executed by the Federal Highway Administration and ADOT.

At this time, ADOT is inquiring whether you have any concerns regarding historic properties of traditional, religious, cultural, or historical importance to your community within the APE. Any information you provide within 30 days of receipt of this letter will be considered in the project planning. If your community opts to participate in cultural resource consultation at a later date, ADOT will make a good faith effort to address your concerns.

### **Scope of Work and APE**

The scope of the project would involve:

- Excavating landslide material adjacent to the northbound roadway
- Installing new ditches in the new and existing cut slope
- Placing excavated material in a 35.22-acre disposal area on Tonto National Forest land adjacent to Sycamore Creek Road
- Use of Forest Road 26 as a turnaround road for project equipment
- Repairing existing pavement as needed
- Seeding disturbed areas
- Placement of advance warning signs on embedded posts and on rigid stands between MP 222.5 and 224.6, and along Sycamore Creek Road.

A temporary construction easement (TCE) and new right-of-way parcel will be acquired from the TNF within the slope stabilization area near MP 224 to allow for project access from the north side of the project along an existing APS road. An additional TCE will be required for use of the disposal area on TNF land. The area of potential effects (APE) is defined as the entire ADOT easement across TNF between MP 222.5 and MP 224.6; the disposal area and advance warning sign TCE along Sycamore Creek road, the new TCEs and ROW near MP 224, and the turnaround area along Forest Road 26.

### **Cultural Resources within APE**

The entire APE has been surveyed as part of this project as well as previous unrelated undertakings. In additional, various data recovery investigations were completed in advance of the current 1990s realignment of SR-87 (Neily et al. 1996 [ARS]; Woodall et al. 1998 [SRI]; Vanderpot et al. 1999 [SRI]).

The stockpiling area was surveyed by Jacobs Engineering Group, Inc. (Jacobs) as part of this project. The results are reported in *A Cultural Resource Survey Report for a Proposed State Route 87 Slate Creek ER Slope Stabilization Project Disposal Area near Sunflower, Gila and Maricopa Counties, Arizona* (Tactikos and Luhnnow 2020). The report is enclosed for your review (Enclosure 2).

SR-87 was previously surveyed by Archaeological Research Services, Inc. (ARS). The results are reported in *Supplemental Cultural Resources Survey for Segment "F" of Final Alignment for State Route 87 between Sunflower and Slate Creek (Mileposts 218-226), Maricopa and Gila Counties, Arizona* (Woodall 1993). Per SHPO guidance point 5, I have reviewed the report and find that it remains adequate. SHPO concurrence on the adequacy of the report is not available.

The turnaround area at Forest Road 26 was previously surveyed by TNF as reported in *An Archaeological Survey of the State Route 87 Waterline Phase 2, Tonto Basin Ranger District, Tonto National Forest* (Sullivan 1998). The report satisfies modern standards; SHPO concurrence on the report's adequacy is not available.



The location of the TCE for access to the APS road, and the new ROW were previously surveyed by TNF as part of project. The results are reported on the unpublished TNF Heritage Inventory Standards and Accounting Form for project 05-09 (Sullivan 2005). The form satisfies modern standards; SHPO concurrence on the reports adequacy is not available.

Ten cultural resources are present within the APE. The cultural resources and project recommendations are summarized in **Table 1** below. Sites AZ U:3:281(ASM)/ AR-03-12-03-125, AR-03-12-06-678 (TNF), and AR-03-12-03-1005 will be flagged for avoidance. Avoidance commitments have been obtained from the ADOT Project Manager and District Engineer that the sites will be avoided by the project. The commitment is enclosed for review (Enclosures 3). An additional avoidance commitment has been obtained ensuring that embedded posts will not be placed within site AZ U:3:366(ASM)/ AR-03-12-03-523 (Enclosure 4). The remaining sites are either no longer eligible within the APE, or will not be impacted by the project.

**Table 1. Cultural Resources within APE**

Site Designation	Description	Jurisdiction	Eligibility Status/Criterion	Concurrence	Recommended Mitigation
AZ U:3:321(ASM)/ AR-03-12-03-581	Prehistoric lithic scatter	ADOT easement through TNF	Determined Not Eligible by ADOT	N/A	None. The site is at the location of embedded advance warning signage. The site was tested and surface collected by (Woodall et al. 1998). No features were found, and few subsurface artifacts were discovered. The site was recommended as mitigated and no further data recovery occurred. Subsequently, SR-87 was built through the site.
AZ U:3:281(ASM)/ AR-03-12-03-125	Prehistoric artifact scatter and features	TNF	Determined Eligible, D	Howard [SHPO] to Wood [TNF], 3/26/1997	Flagging/avoidance. The site is located within the project disposal area and was revisited by Jacobs as part of this project (Tactikos and Luhnnow 2020). The site will be avoided per Enclosure 3.
AZ U:3:322(ASM)/ AR-03-12-03-582	Prehistoric artifact scatter with petroglyphs.	ADOT easement through TNF	Determined Eligible D	AZSITE No. 13114, SHPO, 2000).	None. The site is at the location of embedded warning signage. Within the ADOT easement, the site was tested (Woodall et al. 1998); no subsurface deposits were found and SR-87 was subsequently built through the site. The data potential for the site within the easement has been exhausted.
AZ U:3:323(ASM)/ AR-03-12-03-478	Prehistoric features artifact scatter	ADOT easement through TNF	Eligible, D	N/A	None. The site will not be impacted by the project. The site is located south of the slope stabilization area and embedded signage will not be placed at the site's location.

Site Designation	Description	Jurisdiction	Eligibility Status/Criterion	Concurrence	Recommended Mitigation
AZ U:3:324(ASM)/ AR-03-12-03-583	Artifact scatter (ceramic and flaked stone)	ADOT easement through TNF	Determined Not Eligible by ADOT	N/A	None. The site is at the location of the slope stabilization area. Phase I testing revealed no subsurface deposits (Neily et al. 1996) and SR-87 was subsequently built through part of the site. The site was again surveyed in 2008 in advance of a slope stabilization project and found to be destroyed on the surface. Subsequent slope stabilization projects have removed an estimated 25 feet of the hillside at the site's location.
AZ U:3:366(ASM)/ AR-03-12-03-523	Prehistoric artifact scatter	TNF	Unevaluated	N/A	Use of spring stands for advance warning signs in lieu of embedded posts. The site is at a location where advance warning signage is required. A commitment has been obtained from the Project Manager and District that spring stands will be used and no ground disturbance will occur (Enclosure 4).
AR-03-12-06-678 (TNF)	Historic Sunflower Civilian Conservation Camp	ADOT easement through TNF	Determined Eligible, A and D	Howard [SHPO] to Klaibunde [TNF], 12/31/1999).	Flagging/avoidance. The site is located at the location of the turnaround along Forest Road 26. Equipment/vehicles will not be permitted to leave the pavement in this area. The site will be avoided per Enclosure 3.
AR-03-12-03-1005 (newly recorded)	Prehistoric artifact scatter with features	TNF	Determined Eligible (D) by ADOT as part of this project	N/A	Flagging/avoidance. The site is located within the project disposal area and was recorded by Jacobs as part of this project (Tactikos and Luhnnow 2020). The site will be avoided per Enclosure 3.

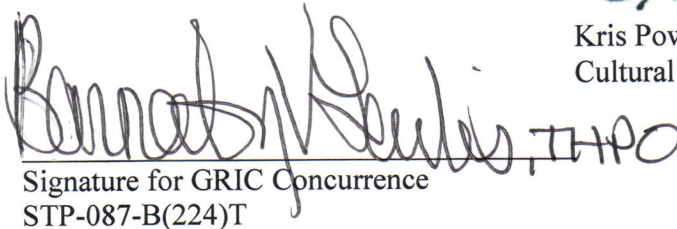
Site Designation	Description	Jurisdiction	Eligibility Status/Criterion	Concurrence	Recommended Mitigation
AR-03-12-06-2536	Historic Slate Creek Road alignment	ADOT easement through TNF	Determined Eligible, D	Howard [SHPO] to Klaibunde [TNF], 12/31/1999	None. Review of aerial imagery indicates that the portion of Slate Creek Road in the APE corresponds to the existing paved turnaround. Within the APE, the road has been extensively modified and no longer retains integrity. Consistent with past ADOT projects at this location, ADOT recommends no further work at the historical alignment/road.
State Route 87	Historical highway	ADOT easement through TNF	Eligible, D per the Interim Procedures for the Treatment of Historic Roads (FHWA et al. 2002)	FHWA et al. 2002	None. The segment within the APE is a modern realignment; the road and its features are therefore non-contributing within the APE.

Based on the above information, ADOT has reached a finding of "no adverse effect." Please review the enclosed map, report, and avoidance commitments. If you find the report adequate and agree with ADOT's finding of project effect, please indicate your concurrence by signing below. If you have any questions or concerns, please feel free to contact Historic Preservation Specialist Danny Rucker at (602) 712-6323 or e-mail [drucker@azdot.gov](mailto:drucker@azdot.gov).

Sincerely,



Kris Powell, MA, RPA  
Cultural Resources Program Manager



Signature for GRIC Concurrence  
STP-087-B(224)T

5/21/2020  
Date

Enclosures

1. Project Overview Map
2. Class III Report (Tactikos and Luhnnow 2020)
3. Avoidance Commitment (flagging of AZ U:3:281[ASM]/ AR-03-12-03-125, AR-03-12-06-678, and AR-03-12-03-1005)
4. Avoidance commitment (spring stands at AZ U:3:321[ASM]/ AR-03-12-03-581)

ecc:

Mr. Barnaby Lewis, Tribal Historic Preservation Officer [Barnaby.lewis@gric.nsn.us](mailto:Barnaby.lewis@gric.nsn.us)  
(w/enclosure)

Dr. Kyle Woodson, Director, Cultural Resource Management Program  
[kyle.woodson@gric.nsn.us](mailto:kyle.woodson@gric.nsn.us) (w/enclosure)

**Project Documentation - Appendix A7:**  
**Example of a “de minimis” Section 4(f) Letter**



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**ARIZONA DIVISION**

4000 North Central Avenue  
Suite 1500  
Phoenix, Arizona 85012-3500  
Phone: (602) 379-3646  
Fax: (602) 382-8998  
<http://www.fhwa.dot.gov/azdiv/index.htm>

August 23, 2018

In Reply Refer To:

CHN-0(240)D  
TRACS No. 0000 MA CHN T0099 01C  
Chandler Heights Road Improvements (McQueen to Gilbert Road)  
Continuing Section 106 Consultation  
"no adverse effect"-PA Stipulation X.F.2.b  
Section 4(f) Consultation  
*De minimis*

Dr. David Jacobs, Compliance Specialist  
State Historic Preservation Office  
Arizona State Parks and Trails  
1100 West Washington Street  
Phoenix, Arizona 85007

Dear Dr. Jacobs:

The Federal Highway Administration (FHWA) and the Arizona Department of Transportation (ADOT) are assisting the City of Chandler (City) with a street improvement project that is located along Chandler Heights Road from approximately 0.1 mile west of McQueen Road to approximately 0.1 mile east of Gilbert Road in Chandler, Maricopa County, Arizona. Because this project is qualified for federal funding, it is considered an undertaking subject to Section 106 review. The project is located in portions of Township 2 South, Range 5 East, Sections 22-27 and Township 2 South, Range 6 East, Sections 19 and 30 of the Gila and Salt River Baseline and Meridian as depicted on the Gila Butte U.S. Geological Survey 7.5-minute topographic quadrangle.

The project would occur within existing City right-of-way (ROW), on land owned by the Roosevelt Water Control District (RWCD), and on private land. The project would require acquisition of ~ 6.1 acres of new City ROW, in addition to ~3.2 acres of Temporary Construction Easements (TCEs), and ~ 6.0 acres for Public Utility Easements (PUEs), Drainage Easements (DEs), and RWCD irrigation easements. Consulting parties for the project are FHWA, ADOT, the State Historic Preservation Office (SHPO), the Arizona State Museum, the City, and the RWCD. Due to the limited scope and nature of the project, tribal consultation is not warranted. No lasting visual, auditory, or atmospheric effects are anticipated.

The scope of the project would include:

- Widening Chandler Heights Road to accommodate two thru lanes in each direction, bike lanes, a raised median island, curb, gutter, and sidewalks;
- Reconstructing driveways and sidewalk ramps to meet Americans with Disabilities Act (ADA) requirements;
- Constructing drainage improvements such as scuppers, inlets, retention basins and storm drain;
- Removing signs and providing new signing;
- Obliterating pavement striping and replacing striping as needed;
- Replacing the traffic signal at Chandler Heights Road/Adams Avenue intersection;
- Relocating RWCD and private irrigation facilities;
- Improving signal interconnect and street light improvements and converting all existing high-pressure sodium (HPS) street lights to light-emitting diode (LED) street lights;
- Installing or restoring landscaping and irrigation;
- Installing or rehabilitating public water, sanitary sewer, and reclaimed water systems;
- Replacing six-inch asbestos-cement pipe (ACP) waterline along Chandler Heights Road east of McQueen Road;
- Relocating overhead and underground electric, gas, fiber optic, telephone and cable television (TV);
- Replacing or rehabilitating waterline and sewer manhole improvements;
- Geotechnical and potholing investigations; and
- Obtaining new ROW, PUEs, DEs, RWCD irrigation easements, and TCEs.

The area of potential effects (APE) is defined as a variable width corridor along Chandler Heights Road from 0.10 mile west of McQueen Road to 0.10 mile east of Gilbert Road including the above mentioned new City ROW, TCEs, PUEs, DEs, and RWCD irrigation easements. Previous consultation for the geotechnical investigations and potholing resulted in a finding of “no adverse effect,” and was conducted pursuant to the 23 U.S.C. 326 Memorandum of Understanding executed by the FHWA and ADOT dated January 3, 2018 (Powell [ADOT] to Jacobs [SHPO] April 3, 2018; SHPO concurrence April 3, 2018).

The APE was recently surveyed by PaleoWest Archaeology, LLC (PaleoWest), as reported in *Class III Cultural Resources Survey of 136 Acres for the Chandler Heights Road Improvements Project, McQueen Road to Gilbert Road, Chandler, Maricopa County, Arizona* (Klebacha 2018). During the survey, four cultural resources were identified within the project area—the southern extension of the Eastern Canal, a RWCD canal lateral, and two historic-age residential properties at 12749 East Chandler Heights Road and 13103 East Chandler Heights Road were identified in the APE. Initial project consultation was submitted to ASM, SHPO, RWCD, and the City (July 26, 2018; City concurred on August 1, 2018). SHPO reviewed the original report and provided comment (AZ State Parks and Trails memo Bill Collins to David Jacobs August 6, 2018). The report has been subsequently revised and is enclosed here for your review and comment.

The Bureau of Reclamation and Salt River Project (northern) portion of the Eastern Canal has been previously determined eligible for inclusion in the National Register of Historic Places (NRHP) under Criteria A and C (Krohn [ADOT] to Jacobs [SHPO] January 24, 2005; SHPO



concurrence February 2, 2005). The Eastern Canal was listed on the NRHP on August 7, 2017. Conversely, this southern extension of the Eastern Canal within the project area is a component of the RWCD system, which as a whole is unevaluated for the NRHP. It is piped under Chandler Heights Road with improvements such as curb, gutter, sidewalks, and landscaping already in place. No project related work will be conducted within the RWCD ROW for this canal, therefore, no additional investigation or avoidance is recommended.

PaleoWest identified a RWCD canal lateral located along Chandler Heights Road. It is one of 34 primary laterals in the RWCD system. The lateral is not a contributing element to the RWCD system as a whole because its integrity of setting, feeling, and association has been degraded as Chandler transformed from an agricultural area to an urban one. Additionally, the canal lateral has compromised integrity of location, workmanship, and materials, because two non-contiguous segments have been previously piped and moved within the APE. No new City ROW would be required from this RWCD canal and no new improvements other than striping and pavement markings would occur in that location; therefore, no additional investigation or avoidance is recommended.

The main house at 12749 East Chandler Heights Road is not eligible for inclusion in the NRHP under Criterion C (design) as it is an unremarkable example of a common architectural type. It is also not known to be associated with a significant event, agricultural or otherwise, nor with an individual in history so it is not recommended eligible under Criterion A or B, respectively. The property is also unlikely to provide significant information regarding homesteading in Arizona; therefore, it is not recommended eligible under Criterion D. Another house and associated structures are also located on the property. These structures are also not NRHP-eligible because they are not significant and they lack integrity of setting, design, materials, and workmanship.

The property at 13103 East Chandler Heights Road is recommended eligible under Criterion B (person) for its association with Lyle Riggs, an important figure in the Chandler community. In addition to being a rancher and farmer, Lyle was a mechanic who designed and patented several modifications for agricultural equipment, some of which were incorporated into machinery produced by the John Deere Company. His work as an inventor took place on this property and one of his modified tractors is on display at the Chandler Historical Museum.

The residence and associated structures at 13103 East Chandler Heights Road would be avoided by all project activities. **Land from both properties would be taken for new City ROW** and used for TCEs. The potential for indirect effects from visual changes, vibration, and noise was evaluated. Overall, the proposed project would be compatible with the current integrity of setting, feeling, and association because it does not provide a striking contrast to current conditions.

Additionally, one historic-age road alignment was identified within the APE—Chandler Heights Road. Chandler Heights Road first appeared on the 1914 USGS Gila Butte, Arizona map as Citrus Heights Road. It was the major road leading into the Chandler Heights area which was a major producer of citrus, especially oranges, in Maricopa County. It remained under the name of Citrus Heights Road on the 1973 USGS map update and was first paved between 1976 and 1979. Although this corridor dates back a hundred years, it is now a part of an urban network of roads that have no individual historic significance. The urbanization over the years has altered its

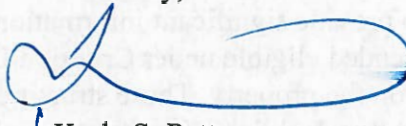
former rural character where it no longer retains integrity. As such, Chandler Heights Road is not eligible for the NRHP.

Therefore, FHWA recommends that this project proceed with a finding of “no adverse effect” per Stipulation X.F.2.b of the *Programmatic Agreement Pursuant to Section 106 of the National Historic Preservation Act Regarding Implementation of Federal-Aid Transportation Projects in the State of Arizona*.

Please review the enclosed report and the information provided in this letter. If you agree with FHWA’s eligibility recommendations and finding of project effect, please indicate your concurrence by signing on the line provided.

As the property at 13103 East Chandler Heights Road is eligible for inclusion in the NRHP under Criterion B, it is subject to the protection provisions of Section 4(f) of the Department of Transportation Act (Title 23, Code of Federal Regulations [CFR], Part 774). Pursuant to 23 CFR 774.5(b)(1), FHWA is herein informing SHPO that FHWA intends to use SHPO’s signed concurrence on a finding of “no adverse effect” to make a Section 4(f) *de minimis* impact determination for this resource. If you have any questions or concerns, please contact ADOT Historic Preservation Specialist Saskia Ekstrom at 602-712-4232 or at [sekstrom@azdot.gov](mailto:sekstrom@azdot.gov).

Sincerely,



Karla S. Petty  
Division Administrator

Signature for SHPO Concurrence project effect  
CHN-0(240)D

Date

Enclosures

cc:

TWilson

SEkstrom (EM02)

## **Appendix B - GOVERNMENT TO GOVERNMENT CONSULTATION**

# **Coordination Procedures between FHWA Arizona Division and ADOT Environmental Planning for Government-to-Government Requests**

## **BACKGROUND**

The Federal Highway Administration Arizona Division (FHWA) and the Arizona Department of Transportation (ADOT) recognize the sovereign status of federally-recognized Tribes and the importance of meaningful engagement with Tribes. Our agencies are committed to working together with Tribes for the common purpose of regular and meaningful consultation with the Tribes when there is a proposed action by ADOT within Arizona that affects a Tribe as a sovereign or governmental entity.

Pursuant to 23 U.S.C. 326 and 23 U.S.C. 327, FHWA and ADOT have entered into two memoranda of understanding (MOU) which assign NEPA responsibilities to ADOT (326 CE Assignment MOU and 327 NEPA Assignment MOU). Under these agreements, FHWA retains its government-to-government responsibilities and acknowledges its federal relationship with Tribes as sovereign nations (Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments).

FHWA and ADOT respect each Tribe's government, people, history, culture, codes, and laws in recognition of tribal sovereignty. FHWA and ADOT encourages mutual understanding of unique cultural and organizational practices among the Tribes and our agencies. FHWA and ADOT are committed to developing relationships with the Tribes and appreciates and encourages the Tribes' contribution to the transportation needs in the State of Arizona.

## **PURPOSE**

The purpose of this document is to establish procedures for responding to formal government-to-government consultation requests as outlined in the MOUs, to establish communication protocols between FHWA and ADOT, and to clarify FHWA and ADOT roles and responsibilities when undertaking government-to-government consultation. This protocol reinforces the foundation for establishing and maintaining effective government-to-government communications between FHWA, ADOT, and Tribes to ensure that consultation is conducted in a culturally sensitive manner and that Tribes have an opportunity to express their concerns. The intent is to foster communication between our agencies and share information so that tribal concerns can be addressed.

This document applies to formal government-to-government requests related to cultural resources and project-specific environmental concerns (e.g., Section 106, Section 4(f), or natural resources). For government-to-government requests not related to NEPA, Section 106, or cultural resources, FHWA will notify the ADOT CRM and the ADOT Environmental Planning Administrator to identify the appropriate ADOT office or division to handle the request. While most interactions with Tribes are related to cultural resource issues, FHWA and ADOT recognize that government-to-government consultation extends beyond this and Tribes may have concerns related to planning, construction, or maintenance.

This document is not intended to expand, contract, or otherwise diminish or limit the sovereignty held by the state or any federally-recognized Tribe.

## **PROCEDURE**

### **Responsibilities, Process, and Protocols**

To ensure that the processes and procedures are generally uniform and consistent, while maintaining necessary flexibility, FHWA and ADOT will adhere to the following steps when responding to a formal government-to-government request from a Tribe:

#### **1. Receipt of Request by FHWA**

In order to initiate government-to-government consultation with FHWA, a Tribe must make a specific written or verbal request to FHWA for their involvement (e.g., face-to-face, phone, email, or letter). Upon receipt of such request, FHWA will follow up with the Tribe to confirm details regarding their request for FHWA involvement. This may be done through phone calls or emails, and may require a formal letter response from FHWA to the Tribe. FHWA will ensure that all correspondence with the Tribe is appropriately documented per Step 7 of these procedures.

#### **2. Notification to ADOT**

FHWA will notify the ADOT Cultural Resources Manager (CRM) and ADOT Historic Preservation Team (HPT) project contact of the Tribe's government-to-government request. If ADOT was previously notified of the request by the Tribe, FHWA will confirm with ADOT that ADOT received the request and that FHWA is considering the request formal government-to-government consultation. FHWA will also confirm with ADOT who will be the FHWA point of contact (Environmental Program Manager or Environmental Protection Specialist).

Additional ADOT staff may also need to be notified of the request (e.g., Environmental Planning management, NEPA planners, environmental resource specialists, project manager). FHWA will coordinate with the ADOT CRM on identifying participants and how they will be notified.

#### **3. FHWA Evaluation of the Tribe's Request**

When a Tribe requests formal government-to-government consultation with FHWA, FHWA will need to evaluate the nature of the request, gather information about the request and the related proposed action or project, and seek to fully understand the Tribe's concern. FHWA may need to review ADOT project documentation and other related information which may include Section 106 documentation (e.g., SHPO/THPO consultation, inventory report), NEPA documentation, and other environmental resource information. FHWA will request the project documentation via email to the ADOT CRM, ADOT HPT lead, and ADOT NEPA planner assigned to the project.

FHWA may also need to request additional information from the Tribe regarding their request. This may involve coordinating with the Tribe by phone, email, letter, or in-person meeting.

#### **4. FHWA and ADOT Coordination**

FHWA will coordinate with ADOT (either by phone or meeting) regarding the Tribe's concerns and issues to be resolved. FHWA will strive to be as transparent as possible regarding sharing information with ADOT.

Both FHWA and ADOT will work together to develop a strategy for addressing the Tribe's concerns, including identifying a range of possible resolution options.

## **5. Consultation with the Tribe**

FHWA's goal is to provide an opportunity for the Tribe to express their concerns and to have their voice heard. The nature of the Tribe's request will dictate how FHWA participates in the consultation process. FHWA will clarify with ADOT what will be FHWA's role in consultation and how FHWA intends to participate.

Most likely, consultation will involve FHWA and ADOT meeting with the Tribe. Depending on the nature of the Tribe's request or concerns, the meeting may involve only the Tribe and FHWA. FHWA will coordinate with ADOT in advance of any meetings with the Tribe regarding meeting attendees, logistics, agenda items, and expectations. If FHWA meets with the Tribe without ADOT, FHWA will inform ADOT of the outcome of the meeting.

Consultation with the Tribe may involve multiple steps, ongoing communication, and meetings. FHWA and ADOT will coordinate with the Tribe to identify a resolution to consultation and possible outcomes.

## **6. Resolution Evaluation**

Based on input from the Tribe and the outcome of consultation, FHWA will determine if their government-to-government responsibilities have been met and if the Tribe's concern has been adequately addressed. After discussions with both ADOT and the Tribe, if it has been demonstrated that a mutually acceptable resolution, consensus, or compromise has been reached, FHWA would consider consultation complete. FHWA will ensure this is appropriately documented per Step 7 of these procedures.

If disagreement still exists, FHWA will work with ADOT to determine the next steps. This could include evaluating if it is appropriate to advance the project while continuing consultation with the Tribe, if modifications to the project delivery schedule are warranted, or if other actions are needed to address the Tribal concerns.

If the disagreement cannot be resolved, a dispute resolution or conflict escalation will be needed. FHWA will evaluate the situation to determine the most effective path forward, which could be escalating to leadership, mediation, or following the procedures for withdrawal of assigned projects per the MOUs.

## **7. Documentation**

The entire process of government-to-government consultation should be appropriately documented for the project file or program record, for both FHWA and ADOT, including correspondence, meeting minutes, action items, and outcome of consultation. This may include completing a letter response, closeout memo, note to file, or internal tracking procedures. FHWA and ADOT will coordinate to determine the type of documentation needed.



## DEFINITIONS

1. “Tribe” means any Tribe located within Arizona or has ancestral ties to Arizona that is on the list of federally-recognized Tribes published by the federal Bureau of Indian Affairs.
2. “Consultation” means the timely process of meaningful inter-government dialogue between FHWA, ADOT divisions or offices, and federally-recognized Tribes regarding a proposed action(s) by ADOT that significantly or uniquely affects a Tribe(s). When assessing what action will be subject to consultation, FHWA and ADOT shall take into account the cultural and traditional activities of the Tribe that could be significantly or uniquely affected by the proposed action, as well as any relevant state and/or federal law. “Consultation” may take place by in-person meeting, teleconference, videoconference, and exchange of written documents, e-mail, or other means appropriate to the circumstances.
3. “Proposed Action” means any proposed project, activities, decisions, development of plans, policy, procedures, programs, services, or other actions undertaken by ADOT that significantly or uniquely affect a Tribe.

## REFERENCES

[Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments](#)  
[ADOT CE Assignment and NEPA Assignment webpage](#)

## **Appendix C - STANDARD WORK FOR ARCHAEOLOGICAL AVOIDANCE FLAGGING**



## **STANDARD WORK FOR ARCHAEOLOGICAL AVOIDANCE FLAGGING**

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If all work is restricted to the previously disturbed roadway prism, avoidance flagging is not warranted. HPT Team Lead tracks the projects requiring flagging and monitoring.

Written confirmation must be obtained from the Project Manager and the District Engineer prior to consulting on the recommendation to flag for avoidance.

Confirm that sufficient funds are available or can be obtained for a consultant to conduct the avoidance flagging. Follow up with the NEPA Planner as needed to ensure that a consultant is under contract to conduct flagging.

The need for avoidance flagging must be included as an environmental commitment in the NEPA document and in the contract specials. Appropriate wording:

The contractor shall contact the Arizona Department of Transportation Historic Preservation Team (602.712.2343 or 602.712.7767) at least 10 (ten) business days prior to the start of ground-disturbing activities to arrange for a qualified archaeologist to flag avoidance areas.

The contractor shall avoid all flagged and/or otherwise designated sensitive resource areas within or adjacent to the project area.

Flagging must be performed by a qualified archaeologist.

CRP or HPT Staff who conducts the avoidance flagging must coordinate with the District (District Environmental Coordinator or RE; RE must be included in any emails relating to implementation of flagging commitments) and, if available, the contractor to show them the location of the flagging and explain what the flagging means. The CRP or HPT Staff, whichever will be conducting the flagging, should attend the preconstruction meeting to inform the contractor of the areas to be flagged.

Do not place avoidance flagging within the previously disturbed roadway prism. Flagging within the previously disturbed roadway prism could be a safety hazard to both the archaeologist performing the flagging and the traveling public. Additionally, the flagging could be in conflict with work to be conducted within the previously disturbed roadway prism.

Flagging should be done in such a way that the avoidance areas are clearly visible to the contractors and construction crews. If there is a concern that the flagging will not be visible or would be removed, fencing may be considered a more appropriate option, particularly in cases where longer term avoidance is needed. Either orange snow fencing or chain link (for long-term avoidance) may be used as long as funds are available and the PM and the District approve.

Prior to flagging, the site(s) must be relocated in the field. Do not flag based only on previous reports/information without field-checking the location. If a site cannot be relocated or there are large discrepancies found, communicate with HPT Staff from the field to determine appropriate course of action. Record site discrepancies with GPS and update site card as appropriate.

Establish a buffer zone around the site boundary. Suggested buffer zones:

- Prehistoric site – 75 feet
- Historic site – 50 feet
- Prehistoric or historic canals – 50 feet

These bullets are only suggestions. Sites, project activities, and potential impacts must be evaluated on a project-specific basis to determine appropriate buffer zone.

Use 2.5 – 4-foot wooden lath to flag the avoidance area. Do not use stakes or tie flagging tape to trees.

- Spray paint approximately 6-12 inches of the top of the lath using a florescent color
- Mark both sides of the lath with “Avoidance Area” using a sharpie
- Tie florescent colored stripped flagging tape to the top of the lath
- Securely pound lath into the ground at 5 to 10-meter intervals, depending on visibility conditions; with poor visibility no more than 5 meter interval.
- Abut lath to the ROW fence when appropriate.

Take multiple photos of the flagging when completed. Send photos to HPT Staff.

If flagging is done and construction does not begin within a few weeks, conduct field check immediately before construction to ensure flagging is still in place and visible. It is possible that the District can assist with the field check and with removal of the flagging after construction has been completed